NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

LAND HABITATS

PART 351
WILDERNESS AND NATURAL AREAS

324.35101 Definitions.

Sec. 35101. As used in this part:

(a) "Natural area" means a tract of state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(*i*) Has retained or reestablished its natural character, or has unusual flora and fauna or biotic, geologic, scenic, or other similar features of educational or scientific value, but it need not be undisturbed.

(*ii*) Has been identified and verified through research and study by qualified observers.

(*iii*) May be coextensive with or part of a wilderness area or wild area.

(b) "Wild area" means a tract of undeveloped state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(*i*) Is less than 3,000 acres of state land.

(*ii*) Has outstanding opportunities for personal exploration, challenge, or contact with natural features of the landscape and its biological community.

(*iii*) Possesses 1 or more of the characteristics of a wilderness area.

(c) "Wilderness area" means a tract of undeveloped state land or water under control of the department and dedicated and regulated by the department pursuant to this part which:

(*i*) Has 3,000 or more acres of state land or is an island of any size.

(*ii*) Generally appears to have been affected primarily by forces of nature with the imprint of the work of humans substantially unnoticeable.

(*iii*) Has outstanding opportunities for solitude or a primitive and unconfined type of recreation.

(*iv*) Contains ecological, geological, or other features of scientific, scenic, or natural history value.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996.

Popular name: Act 451

Popular name: NREPA

324.35102 Wilderness, wild, and natural areas; duty of department to identify, dedicate, and administer.

Sec. 35102. The department shall identify for dedication, dedicate, and administer wilderness areas, wild areas, and natural areas in accordance with this part. The department shall enlist the voluntary cooperation and support of interested citizens and conservation groups.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35103 Review of state land; identification of certain tracts; determination of dedication; proposed alteration or withdrawal of previously dedicated areas; filing proposals; procedure for making dedication or denying proposal; exchange of dedicated land; notice requirements.

Sec. 35103. (1) The department shall annually review all state land under its control and identify those tracts that in its judgment best exhibit the characteristics of a wilderness area, wild area, or natural area. The department shall determine which land in its judgment is most suitable for dedication as wilderness areas, wild areas, or natural areas. The department shall administer the proposed land so as to protect its natural values.

(2) A citizen may propose to the department land that in his or her judgment exhibits the characteristics of a wilderness area, wild area, or natural area and is suitable for dedication by the department as such or may propose the alteration or withdrawal of previously dedicated areas. Land under control of the department that has been dedicated or designated before August 3, 1972 as a natural area, nature study area, preserve, natural reservation, wilderness, or wilderness study area shall be considered by the department and, if eligible, proposed for dedication. The proposals of the department shall be filed with both houses of the legislature.

(3) Within 90 days after land is proposed in accordance with subsections (1) or (2), the department shall

make the dedication or issue a written statement of its principal reasons for denying the proposal. The department shall dedicate a wilderness area, wild area, or natural area, or alter or withdraw the dedication, by promulgating a rule. The department shall hold a public hearing relative to the dedication in the county where the land to be dedicated is located before a rule making the dedication may be promulgated. Not more than 10% of state land under the control of the department shall be dedicated pursuant to this subsection. All persons who have notified the department in writing during a calendar year of their interest in dedication of areas under this part shall be furnished by the department with a notice of all areas pending dedication or alteration or withdrawal from dedication during that calendar year.

(4) The department may exchange dedicated land for the purpose of acquiring other land that, in its judgment, is more suitable for the purposes of this part.

(5) Except as provided in subsection (4), prior to recommending the transfer of any land that is dedicated as a wilderness area, a wild area, or a natural area under this part, the department shall notify the citizens committee for Michigan state parks created in section 74102a and shall place a public notice in a newspaper of general circulation in the area in which the dedicated land is located describing the proposed transfer. Except as provided in subsection (4), dedicated land shall not be transferred except as specifically authorized by law.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996;—Am. 2006, Act 307, Imd. Eff. July 20, 2006.

Popular name: Act 451

Popular name: NREPA

324.35104 Proximity of wild and natural areas to certain urban centers; designation of private land or land controlled by other governmental units.

Sec. 35104. (1) The department shall attempt to provide, to the extent possible, wild areas and natural areas in relative proximity to urban centers of more than 100,000 population.

(2) Private land or land under the control of other governmental units may be designated by the department in the same way as a wilderness area, wild area, or natural area and administered by the department under a cooperative agreement between the owner and the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35105 Prohibited activities; easement.

Sec. 35105. (1) The following are prohibited on state land in a wilderness area, wild area, or natural area, or on state land proposed by the department for dedication in 1 of these categories during the 90 days a dedication is pending pursuant to section 35103:

(a) Removing, cutting, picking, or otherwise altering vegetation, except as necessary for appropriate public access, the preservation or restoration of a plant or wildlife species, or the documentation of scientific values and with written consent of the department.

(b) Except as provided in subsection (2), granting an easement for any purpose.

(c) Exploration for or extraction of minerals.

(d) A commercial enterprise, utility or permanent road.

(e) A temporary road, landing of aircraft, use of motor vehicles, motorboats, or other form of mechanical transport, or any structure or installation, except as necessary to meet minimum emergency requirements for administration as a wilderness area, wild area, or natural area by the department.

(f) Motorized equipment, except if the department approves its use for management purposes or conservation practices.

(2) If a right-of-way or an easement for ingress and egress was granted on land prior to the land's designation as a wilderness area, wild area, or natural area, upon request, the department may grant an easement along the route of the existing right-of-way or easement for the installation and maintenance of utilities for gas, electric, telephone, and cable services. In granting an easement under this section, the department shall require conditions necessary to protect the wilderness area, wild area, or natural area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996.

Popular name: Act 451

Popular name: NREPA

324.35106 Landing aircraft or operating mechanical transport in wilderness, wild, or natural

area.

Sec. 35106. A person who lands an aircraft or operates a motor vehicle, motorboat, or other form of mechanical transport in a wilderness area, wild area, or natural area without the express written consent of the department is guilty of a misdemeanor.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35107 Maintenance or restoration of wilderness, wild, or natural area.

Sec. 35107. (1) State land in a wilderness area, wild area, or natural area shall be maintained or restored so as to preserve its natural values in a manner compatible with this part.

(2) Grasslands, forested lands, swamps, marshes, bogs, rock outcrops, beaches, and wholly enclosed waters of this state that are an integral part of a wilderness area, wild area, or natural area shall be included within and administered as a part of the area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35108 Posting signs; contents.

Sec. 35108. The department shall post signs in appropriate locations along the borders of a wilderness area, wild area, or natural area. The signs shall give notice of the area's dedication and may state those activities that are prohibited under section 35105 and those activities that are punishable as a misdemeanor pursuant to section 35106.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 290, Imd. Eff. June 19, 1996.

Popular name: Act 451

Popular name: NREPA

324.35109 Acquisition of land.

Sec. 35109. The department may acquire land through purchase, gift, or bequest for inclusion in a wilderness area, wild area, or natural area.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35110 Taxation; audit of assessments; appropriation.

Sec. 35110. The local taxing authority is entitled to collect from the state a tax on a wilderness, wild, or natural area within its jurisdiction at its ad valorem tax rate or $2.00 per acre, whichever is less. The department shall audit the assessments of wilderness, wild, or natural areas regularly to ensure that the properties are assessed in the same ratio as similar properties in private ownership. The legislature shall appropriate from the general fund for payments under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35111 Saving clause.

Sec. 35111. (1) Nothing in this part affects or diminishes any right acquired or vested before August 3, 1972.

(2) Nothing in this part alters the status of land dedicated by the commission before August 3, 1972 until dedicated pursuant to section 35103, except that tax reverted lands are subject to section 35110. Purchased land dedicated by the commission before August 3, 1972 is subject to ad valorem taxes if dedicated pursuant to section 35103.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 353
SAND DUNES PROTECTION AND MANAGEMENT

324.35301 Definitions.

Sec. 35301. As used in this part:

(a) "Contour change" includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining as defined in part 637.

(b) "Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.

(c) "Critical dune area" means a geographic area designated in the "atlas of critical dune areas" dated February 1989 that was prepared by the department.

(d) "Department" means the department of environmental quality.

(e) "Foredune" means 1 or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.

(f) "Model zoning plan" means the model zoning plan provided for in sections 35312 to 35324.

(g) "Planning commission" means the body or entity within a local government that is responsible for zoning and land use planning for the local unit of government.

(h) "Restabilization" means restoration of the natural contours of a critical dune to the extent practicable, and the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.

(i) "Special use project" means any of the following:

(*i*) A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.

(*ii*) A multifamily use of more than 3 acres.

(*iii*) A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.

(*iv*) A proposed use in a critical dune area, regardless of size of the use, that the planning commission, or the department if a local unit of government does not have an approved zoning ordinance, determines would damage or destroy features of archaeological or historical significance.

(j) "Use" means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining as defined in part 637.

(k) "Zoning ordinance" means an ordinance of a local unit of government that regulates the development of critical dune areas within the local unit of government pursuant to the requirements of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.35302 Legislative findings.

Sec. 35302. The legislature finds that:

(a) The critical dune areas of this state are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this state and to people from other states and countries who visit this resource.

(b) Local units of government should have the opportunity to exercise the primary role in protecting and managing critical dune areas in accordance with this part.

(c) The benefits derived from alteration, industrial, residential, commercial, agricultural, silvicultural, and the recreational use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Land and Water Management Division, with the exception of the farmland and open space preservation program, natural rivers program, and Michigan information

resource inventory system, to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.35303 Notice to local units of government and property owners; copy of "atlas of critical dune areas"; contents of notice; supplying addresses of property owners.

Sec. 35303. (1) As soon as practicable following July 5, 1989, the department shall notify by mail each local unit of government that has within its jurisdiction critical dune areas, and include a copy of the "atlas of critical dune areas" dated February 1989 and a copy of former Act No. 222 of the Public Acts of 1976 with the notice. By October 1, 1989, the department shall mail a copy of the same notice to each property owner of record who owns property within a critical dune area. The notices shall include the following information:

(a) That designated property within the local unit of government is a critical dune area that is subject to regulation under former Act No. 222 of the Public Acts of 1976.

(b) That a local unit of government may adopt a zoning ordinance that is approved by the department, or, if the local unit of government does not have an approved ordinance, the use of the critical dune area will be regulated by the department under the model zoning plan.

(2) Upon the request of the department, a local unit of government shall supply to the department the address of each property owner of record who owns property within a critical dune area within its jurisdiction in a timely manner that enables the department to provide notice to the property owners as required under subsection (1).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35304 Permits for uses in critical dune areas; requirements; zoning ordinances; model zoning plan; special exceptions; permit application forms; assisting local units of government.

Sec. 35304. (1) A local unit of government that issues permits or the department if it issues permits as provided under subsection (5) shall issue the permits subject to all of the following requirements:

(a) A person proposing a use within a critical dune area shall file an application with the local unit of government, or with the department if the department is issuing permits under the model zoning plan. The application form shall include information that may be necessary to conform with the requirements of this part. If a project proposes the use of more than 1 critical dune area location within a local unit of government, 1 application may be filed for the uses.

(b) Notice of an application filed under this section shall be sent to a person who makes a written request to the local unit of government for notification of pending applications accompanied by an annual fee established by the local unit of government. The local unit of government shall prepare a monthly list of the applications made during the previous month and shall promptly mail copies of the list for the remainder of the calendar year to the persons who have requested notice. In addition, if the department issues permits under this part within a local unit of government, notice of an application shall be given to the local conservation district office, the county clerk, the county health department, and the local unit of government in which the property is located. The monthly list shall state the name and address of each applicant, the location of the applicant's project, and a summary statement of the purpose of the use. The local unit of government may hold a public hearing on pending applications.

(c) The notice shall state that unless a written request is filed with the local unit of government within 20 days after the notice is mailed, the local unit of government may grant the application without a public hearing. Upon the written request of 2 or more persons that own real property within the local unit of government or an adjacent local unit of government, or that reside within the local unit of government or an adjacent local unit of government, the local unit of government shall hold a public hearing pertaining to a permit application.

(d) At least 10 days' notice of a hearing to be held pursuant to this section shall be given by publication in 1 or more newspapers of general circulation in the county in which the proposed use is to be located, and in other publications, if appropriate, to give notice to persons likely to be affected by the proposed use, and by mailing copies of the notice to the persons who have requested notice pursuant to subsection (1) and to the person requesting the hearing.

(e) After the filing of an application, the local unit of government shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held. When a permit is denied, the local unit of government shall

provide to the applicant a concise written statement of its reasons for denial of the permit, and if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the local unit of government may issue a conditional permit before the expiration of the 20-day period referred to in subdivision (c).

(f) The local unit of government shall base a decision to grant or deny a permit required by this section on the model zoning plan or on any existing ordinance that is in effect in the local unit of government that provides the same or a greater level of protection for critical dune areas and that is approved by the department.

(2) A local unit of government zoning ordinance regulating critical dune areas may be more restrictive of development and more protective of critical dune areas than the model zoning plan.

(3) As soon as possible following adoption of a zoning ordinance enacted pursuant to this part, the local unit of government shall submit to the department a copy of the ordinance that it determines meets the requirements of this part. If the local unit of government has an existing ordinance that it contends is at least as restrictive as the model zoning plan, that ordinance may be submitted to the department at any time. The department shall review zoning ordinances submitted under this section to assure compliance with this part. If the department finds that an ordinance is not in compliance with this part, the department shall work with the local unit of government to bring the ordinance into compliance and inform the local unit of the failure to comply and in what ways the submitted ordinance is deficient. Unless a local unit of government receives notice within 90 days of submittal that the ordinance they submit to the department under this subsection is not in compliance with this part, the local unit of government shall be considered to be approved by the department.

(4) A local unit of government may adopt, submit to the department, and obtain approval of a zoning ordinance based on the model zoning plan or an equivalent ordinance as provided in this section by June 30, 1990. If a local unit does not have an approved ordinance by June 30, 1990, the department shall implement the model zoning plan for that local unit of government in the same manner and under the same circumstances as provided in subsection (1). Notwithstanding any other provision of this part, a local unit of government may adopt a zoning ordinance at any time, and upon the approval of the department, that ordinance shall take the place of the model zoning plan implemented by the department.

(5) If a local unit of government in which a proposed use is to be located does not elect to issue permits or does not receive approval of a zoning ordinance that regulates critical dune areas, the department shall implement the model zoning plan in the place of the local unit of government and issue special exceptions in the same circumstances as provided in this part for the issuance of variances by local units of government, and issue permits pursuant to subsection (1) and part 13.

(6) The department shall assist local units of government in developing ordinances that meet the requirements of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004.

Popular name: Act 451

Popular name: NREPA

324.35305 Hearing; judicial review.

Sec. 35305. (1) If a person is aggrieved by a decision of the department in regard to the issuance or denial of a permit or special exception under this part, the person may request a formal hearing on the matter involved. The hearing shall be conducted by the department as a contested case hearing in the manner provided for in the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(2) Following the hearing provided for under subsection (1), a decision of the department in regard to the issuance or denial of a permit or special exception under this part is subject to judicial review as provided for in Act No. 306 of the Public Acts of 1969.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35306 Lawful use of land or structure.

Sec. 35306. (1) The lawful use of land or a structure, as existing and lawful within a critical dune area at the time the department implements the model zoning plan for a local unit of government, may be continued although the use of that land or structure does not conform to the model zoning plan. The continuance, completion, restoration, reconstruction, extension, or substitution of existing nonconforming uses of land or a

structure may continue upon reasonable terms that are consistent, to the extent possible, with the applicable zoning provisions of the local unit of government in which the use is located.

(2) The lawful use of land or a structure, as existing and lawful within a local unit of government that has a zoning ordinance approved by the department, may, but is not required by this part to, be continued subject to the law pertaining to existing uses within the act that enables that local unit of government to zone and the applicable zoning provisions of the local unit of government.

(3) A use needed to obtain or maintain a permit or license that is required by law to continue operating an electric utility generating facility that is in existence on July 5, 1989 shall not be precluded under this part.

(4) Uses that have received all necessary permits from the state or the local unit of government in which the proposed use is located by July 5, 1989, are exempt for purposes for which a permit is issued from the operation of this part or local ordinances approved under this part. Such uses shall be regulated pursuant to local ordinances in effect by that date.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35307 Maps.

Sec. 35307. Upon adoption of an approved zoning ordinance, certified copies of the maps showing critical dune areas, and existing development and uses, shall be sent by the local unit of government to the state tax commission and the assessing office, planning commission, and governing board of the local unit of government, if requested by an entity listed in this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35308 Prohibited uses; exception.

Sec. 35308. (1) Except as provided in subsection (2), the following uses shall be prohibited in a critical dune area:

(a) A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation.

(b) Production facilities regulated under parts 615 and 625.

(2) Uses described in subsection (1) that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the department.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35309 Use permit and inspection fee; disposition of fees; authorization of separate fee; bond.

Sec. 35309. (1) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may establish a use permit and inspection fee.

(2) The department shall forward all fees it collects under this section to the state treasurer for deposit in the land and water management permit fee fund created in part 301.

(3) Fees collected by a local unit of government shall be credited to the treasury of the local unit of government to be used to defray the cost of administering uses under a zoning ordinance.

(4) In addition to fees provided for in this section, a soil conservation district may charge a separate fee to cover the actual expense of providing services under this part and for providing technical assistance and advice to individuals who seek assistance in matters pertaining to compliance under this part.

(5) A local unit of government, or the department if the local unit of government does not have an approved zoning ordinance, may require the holder of a permit issued by a local unit of government or the department to file with the local unit of government or the department a bond executed by an approved surety in this state in an amount necessary to assure faithful conformance with the permit.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35310 Suspension or revocation of permit; restraining order, injunction, or other

appropriate remedy; instituting action; cumulative rights; performance review; determination of noncompliance; response; implementation of model zoning plan; appeal; civil fine; order to pay cost of restabilization; violation as misdemeanor.

Sec. 35310. (1) If the department finds that a person is not in compliance with the model zoning plan if the department is implementing the plan, or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 35322, the department may suspend or revoke the permit.

(2) At the request of the department or a person, the attorney general may institute an action for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of the model zoning plan if the department is implementing the provisions of the plan or if the department is involved in the modification or reversal of a decision regarding a special use project as provided in section 35322. At the request of a member of the governing body of a local unit of government or a person, the county prosecutor may institute an action for a restraining order or injunction or other proper remedy to prevent a violation of a zoning ordinance approved under this part. This shall be in addition to the rights provided in part 17, and as otherwise provided by law. An action under this subsection instituted by the attorney general may be instituted in the circuit court for the county of Ingham or in the county in which the defendant is located, resides, or is doing business.

(3) The department shall periodically review the performance of all local units of government that have ordinances approved under this part. If the department determines that the local unit of government is not administering the ordinance in conformance with this part, the department shall notify the local unit of government in writing of its determination, including specific reasons why the local unit of government is not in compliance. The local unit of government has 30 days to respond to the department. If the department determines that the local unit of government has not made sufficient changes to its ordinance administration or otherwise explained its actions, the department may withdraw the approval of the local ordinance and implement the model zoning plan within that local unit of government. If a local unit disagrees with an action of the department to withdraw approval of the local ordinance, it may appeal that action pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, in the manner provided in that act for contested cases.

(4) In addition to any other relief provided by this section, the court may impose on a person who violates this part, or a permit, a civil fine of not more than $5,000.00 for each day of violation, or may order a violator to pay the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both.

(5) A person who violates this part, or a person who violates a permit issued under this part, is guilty of a misdemeanor, punishable by a fine of not more than $5,000.00 per day for each day of violation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35311 Review of “atlas of critical dune areas”; appointment and duties of review team.

Sec. 35311. By May 23, 1995, the department shall appoint a team of qualified ecologists who may be employed by the department or may be persons with whom the department enters into contracts who shall review “the atlas of critical dune areas” dated February 1989. The review team shall evaluate the accuracy of the designations of critical dune areas within the atlas and shall recommend to the legislature any changes to the atlas or underlying criteria revisions to the atlas that would provide more precise protection to the targeted resource. In addition, the review team shall recommend whether the slope criteria in section 35330(1)(a) and (b) are appropriate and supported by the best available technical data and whether stairways and driveways in critical dune areas should be subject to the same criteria as other constructed uses.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35312 Zoning ordinance; formulation procedure; mandatory provisions; regulation of additional lands.

Sec. 35312. (1) After consulting with the local soil conservation district, a local unit of government that has 1 or more critical dune areas within its jurisdiction may formulate a zoning ordinance pursuant to the following:

(a) A county may zone as provided in the county rural zoning enabling act, Act No. 183 of the Public Acts

of 1943, being sections 125.201 to 125.232 of the Michigan Compiled Laws.

(b) A city or village may zone as provided in Act No. 207 of the Public Acts of 1921, being sections 125.581 to 125.592 of the Michigan Compiled Laws.

(c) A township may zone as provided in the township rural zoning act, Act No. 184 of the Public Acts of 1943, being sections 125.271 to 125.301 of the Michigan Compiled Laws.

(2) A zoning ordinance shall consist of all of the provisions of the model zoning plan or comparable provisions that are at least as protective of critical dune areas as the model zoning plan.

(3) A local unit of government may regulate additional lands as critical dune areas under this part as considered appropriate by the planning commission if the lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area. A local unit of government shall provide within its zoning ordinance for the protection of lands that are within 250 feet of a critical dune area, if those lands are determined by the local unit of government to be essential to the hydrology, ecology, topography, or integrity of a critical dune area.

(4) If a local unit of government does not have an approved zoning ordinance, the department may regulate additional lands described in subsection (3). However, the lands added by the department shall not extend more than 250 feet from the landward boundary of a critical dune area, unless the governing body of the local unit of government authorizes such an extension.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35313 Zoning ordinance; requirements for applications for permits for use of critical dune area.

Sec. 35313. A zoning ordinance shall require that all applications for permits for the use of a critical dune area include in writing:

(a) That the county enforcing agency designated pursuant to part 91 finds that the project is in compliance with part 91 and any applicable soil erosion and sedimentation control ordinance that is in effect in the local unit of government.

(b) That a proposed sewage treatment or disposal system on the site has been approved by the county health department or the department.

(c) Assurances that the cutting and removing of trees and other vegetation will be performed according to the instructions or plans of the local soil conservation district. These instructions or plans may include all applicable silvicultural practices as described in the "voluntary forestry management guidelines for Michigan" prepared by the society of American foresters in 1987. The instructions or plans may include a program to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation than were removed by the proposed use.

(d) Except as otherwise provided in subdivision (e), a site plan that contains data required by the planning commission concerning the physical development of the site and extent of disruption of the site by the proposed development. The planning commission may consult with the soil conservation district in determining the required data.

(e) An environmental assessment that comports with section 35319 for a special use project. An environmental impact statement pursuant to section 35320 may be required if the additional information is considered necessary or helpful in reaching a decision on a permit application for a special use project.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35314 Zoning ordinance; provisions; review of subdivision development.

Sec. 35314. (1) A zoning ordinance shall provide for all of the following:

(a) Lot size, width, density, and front and side setbacks.

(b) Storm water drainage that provides for disposal of drainage water without serious erosion.

(c) Methods for controlling erosion from wind and water.

(d) Restabilization.

(2) Each zoning ordinance shall provide that a use that proposes a subdivision development shall be reviewed by the local unit of government to assure compliance with all of the model zoning plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35315 Zoning ordinance; prohibited uses in critical dune area.

Sec. 35315. A zoning ordinance shall not permit either of the following uses in a critical dune area:

(a) The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.

(b) A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35316 Zoning ordinances; additional prohibited uses in critical dune area; variance; structures; contour maps; guidelines; restoration.

Sec. 35316. (1) Unless a variance is granted pursuant to section 35317, a zoning ordinance shall not permit the following uses in a critical dune area:

(a) A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with plans prepared for the site by a registered professional architect or a licensed professional engineer and the plans provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water. Prior to approval of the plan, the planning commission shall consult with the local soil conservation district.

(b) A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.

(c) A use that is a structure that is not in compliance with subsection (2).

(d) A use involving a contour change that is likely to increase erosion, decrease stability, or is more extensive than required to implement a use for which a permit is requested.

(e) Silvicultural practices, as described in the "voluntary forest management guidelines for Michigan", prepared by the society of American foresters in 1987, that are likely to increase erosion, decrease stability, or are more extensive than required to implement a use for which a permit is requested.

(f) A use that involves a vegetation removal that is likely to increase erosion, decrease stability, or is more extensive than required to implement a use for which a permit is requested.

(g) A use that is not in the public interest. In determining whether a proposed use is in the public interest, the local unit of government shall consider both of the following:

(*i*) The availability of feasible and prudent alternative locations or methods, or both, to accomplish the benefits expected from the use. If a proposed use is 1 single family dwelling on a lot of record owned by the applicant, consideration of feasible and prudent alternative locations shall be limited to the lot of record on which the use is proposed. A lot of record shall not be created strictly for the purpose of avoiding consideration of alternative locations under this subparagraph.

(*ii*) The impact that is expected to occur to the critical dune area, and the extent to which the impact may be minimized.

(2) A use that is a structure shall be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. However, if construction occurs within 100 feet measured landward from the crest of the first landward ridge that is not a foredune, the applicant shall demonstrate that the proposed use meets all of the following requirements:

(a) The use will not destabilize the critical dune area.

(b) Contour changes and vegetative removal are limited to that essential to siting the structure and access to the structure.

(c) Access to the structure is from the landward side of the dune.

(d) The dune is restabilized with indigenous vegetation.

(e) Construction techniques and methods are employed that mitigate the impact on the dune.

(f) The crest of the dune is not reduced in elevation.

(g) If the department is implementing the model zoning plan, the use meets all other applicable requirements of the zoning ordinance or the model zoning plan.

(3) If the local unit of government is not certain of the degree of slope on a property for which a use permit is sought, the local unit may require that the applicant supply contour maps of the site with 5-foot intervals at or near any proposed structure or roadway or consult with the local soil conservation district regarding the degree of slope.

(4) Within 60 days after the effective date of this section, the department shall develop guidelines to describe the method by which the department and local units of government measure slopes to implement the requirements of the zoning ordinance or the model zoning plan.

(5) If a person is ordered by the department, or by a local unit of government that is enforcing a zoning ordinance authorized under this part, to restore a critical dune area that has been degraded by that person, the department or local unit of government shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996.

Popular name: Act 451

Popular name: NREPA

324.35317 Variances; special exceptions; limitations; annual report; determination of unreasonable hardship; review and comment; notice of opposition; determination of practical difficulty.

Sec. 35317. (1) A local unit of government may issue variances under a zoning ordinance, or the department may issue special exceptions under the model zoning plan if a local unit of government does not have an approved zoning ordinance, if a practical difficulty will occur to the owner of the property if the variance or special exception is not granted. In determining whether a practical difficulty will occur if a variance or special exception is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. A variance or a special exception is also subject to the following limitations:

(a) A variance shall not be granted from a setback requirement provided for under the model zoning plan or an equivalent zoning ordinance enacted pursuant to this part unless the property for which the variance is requested is 1 of the following:

(*i*) A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of this part or a zoning ordinance.

(*ii*) A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.

(*iii*) Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.

(b) A variance or special exception shall not be granted that authorizes construction of a dwelling or other permanent building on the first lakeward facing slope of a critical dune area or a foredune. However, a variance or special exception may be granted if the proposed construction is near the base of the lakeward facing slope of the critical dune on a slope of less than 1-foot vertical rise in an 8-foot horizontal plane on a nonconforming lot of record that is recorded prior to July 5, 1989 that has borders that lie entirely on the first lakeward facing slope of the critical dune area that is not a foredune.

(2) Each local unit of government that has issued a variance for a use other than a special use project during the previous 12 months shall file an annual report with the department indicating variances that have been granted by the local unit of government during that period.

(3) Upon receipt of an application for a special exception under the model zoning plan, the department shall forward a copy of the application and all supporting documentation to the local unit of government having jurisdiction over the proposed location. The local unit of government shall have 60 days to review the proposed special exception. The department shall not make a decision on a special exception under the model zoning plan until either the local unit of government has commented on the proposed special exception or has waived its opportunity to review the special exception. The local unit of government may waive its opportunity to consider the application at any time within 60 days after receipt of the application and supporting documentation by notifying the department in writing. If the local unit of government waives its opportunity to review the application, or fails to act as authorized in this section within 60 days, the local unit of government also waives its opportunity to oppose the decision by the department to issue a special exception. If the local unit of government opposes the issuance of the special exception, the local unit of government shall notify the department, in writing, of its opposition within the 60-day notice period. If the local unit of government opposes the issuance of the special exception, the department shall not issue a special exception. The local unit of government may also consider whether a practical difficulty will occur to the owner of the property if the special exception is not granted by the department and may make a recommendation to the department within the 60-day notice period. The department shall base its

determination of whether a practical difficulty exists on information provided by the local unit of government and other pertinent information.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 262, Imd. Eff. Jan. 8, 1996.

Popular name: Act 451

Popular name: NREPA

324.35318 Request for revaluation to determine fair market value.

Sec. 35318. If a permit for a proposed use within a critical dune area is denied, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the restriction.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35319 Environmental assessment; contents.

Sec. 35319. The zoning ordinance shall provide that if an environmental assessment is required under section 35313(e), that assessment shall include the following information concerning the site of the proposed use:

(a) The name and address of the applicant.

(b) A description of the applicant's proprietary interest in the site.

(c) The name, address, and professional qualifications of the person preparing the environmental assessment and his or her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.

(d) The description and purpose of the proposed use.

(e) The location of existing utilities and drainageways.

(f) The general location and approximate dimensions of proposed structures.

(g) Major proposed change of land forms such as new lakes, terracing, or excavating.

(h) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.

(i) Approximate location and type of proposed drainage, water, and sewage facilities.

(j) Legal description of property.

(k) A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.

(*l*) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.

(m) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35320 Environmental impact statement; contents.

Sec. 35320. If an environmental impact statement is required under section 35313(e) prior to permitting a proposed use, a zoning ordinance may require that the statement include all of the following:

(a) The name and address of the applicant.

(b) A description of the applicant's proprietary interest in the site of the proposed use.

(c) The name, address, and professional qualifications of the proposed professional design team members, including the designation of the person responsible for the preparation of the environmental impact statement.

(d) The description and purpose of the proposed use.

(e) Six copies and 1 reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.

(f) The location of the existing utilities and drainageways.

(g) The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.

(h) The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.

(i) The general location and approximate dimensions of proposed structures.

(j) Major proposed change of land forms such as new lakes, terracing, or excavating.

(k) Approximate existing and proposed contours and drainage patterns, showing at least 5-foot contour intervals.

(*l*) Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.

(m) Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.

(n) A legal description of the property.

(o) An aerial photo and contour map showing the development site in relation to the surrounding area.

(p) A description of the physical site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.

(q) A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the "unified soil classification system" as adopted by the United States government corps of engineers and bureau of reclamation, dated January 1952, or the national cooperative soil survey classification system, and the standards for the development prospects that have been offered for each portion of the site.

(r) A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.

(s) A substrata review including a descriptive summary of the various geologic bedrock formations underlying the site, including the identification of known aquifers, the approximate depths of the aquifers, and, if being tapped for use, the principal uses to be made of these waters, including irrigation, domestic water supply, and industrial usage.

(t) An erosion review showing how erosion control will be achieved and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

(u) At a minimum, plans for compliance with all of the following standards shall be required for construction and postconstruction periods:

(*i*) Surface drainage designs and structures are erosion-proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that are included in the design so that drainage waters may be impeded in their flow and percolation encouraged.

(*ii*) The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.

(*iii*) Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.

(*iv*) If vegetation has been removed or has not been able to occur on surface areas such as infill zones, it is the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, windbreaks, and other similar barriers.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35321 Review of site plan; duties of planning commission.

Sec. 35321. A zoning ordinance shall provide that, in reviewing a site plan required under section 35313(d), the planning commission shall do all of the following:

(a) Determine whether the requirements of the zoning ordinance have been met and whether the plan is consistent with existing laws.

(b) Determine whether the advice or assistance of the soil conservation district will be helpful in reviewing a site plan.

(c) Recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to assure compliance with all applicable state and local requirements.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35322 Special use project application, plan, and proposed decision; review; action.

Sec. 35322. Prior to issuing a permit allowing a special use project within a critical dune area, a local unit of government shall submit the special use project application and plan and the proposed decision of the local unit of government to the department. The department shall have 60 days to review the plan and may affirm,

modify, or reverse the proposed decision of the local unit of government.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35323 Destruction of structure or use; exemption.

Sec. 35323. A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, is exempt from the operation of this part or a zoning ordinance under this part for the purpose of rebuilding or replacing the structure or use, if the structure or use was lawful at the time it was constructed or commenced and the structure does not exceed in size or scope that which was destroyed and does not vary from its prior use.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35324 Management of federally owned and state owned land.

Sec. 35324. Federally owned land, to the extent allowable by law, and state owned land within critical dune areas shall be managed by the federal or state government, respectively, in a manner that is consistent with the model zoning plan.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35325 Purchase of lands or interests in lands; purpose.

Sec. 35325. The department or local units of government may purchase lands or interests in lands from a willing seller in critical dune areas for the purpose of maintaining or improving the critical dune areas and the environment of the critical dune areas in conformance with the zoning ordinance, or the model zoning plan if the local unit of government does not have an approved zoning ordinance. Interests that may be purchased may include easements designed to provide for the preservation of critical dune areas and to limit or eliminate development in critical dune areas.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35326 Appropriation; purpose; sufficiency.

Sec. 35326. (1) The legislature shall appropriate to the departments of agriculture, natural resources, and the attorney general sufficient funds to assure the full implementation and enforcement of this part.

(2) Appropriations to the department of agriculture shall be sufficient to assure adequate funding for the soil conservation districts to fulfill their responsibilities under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 355
BIOLOGICAL DIVERSITY CONSERVATION

324.35501 Definitions.

Sec. 35501. As used in this part:

(a) "Biological diversity" means the full range of variety and variability within and among living organisms and the natural associations in which they occur. Biological diversity includes ecosystem diversity, species diversity, and genetic diversity.

(b) "Committee" means the joint legislative working committee on biological diversity created pursuant to section 35504.

(c) "Conserve", "conserving", and "conservation" mean measures for maintaining natural biological diversity and measures for restoring natural biological diversity through management efforts, in order to protect, restore, and enhance as much of the variety of native species and communities as possible in quantities and distributions that provide for the continued existence and normal functioning of native species and communities, including the viability of populations throughout the natural geographic distributions of

native species and communities.

(d) “Ecosystem” means an assemblage of species, together with the species' physical environment, considered as a unit.

(e) “Ecosystem diversity” means the distinctive assemblages of species and ecological processes that occur in different physical settings of the biosphere.

(f) “Genetic diversity” means the differences in genetic composition within and among populations of a given species.

(g) “Habitat” means the area or type of environment in which an organism or biological population normally lives or occurs.

(h) “Reporting department” means a state department or agency that is required by the committee under this part to file 1 or more reports.

(i) “Species diversity” means the richness and variety of native species.

(j) “State strategy” means the recommended state strategy prepared by the committee.

(k) “Sustained yield” means the achievement and maintenance in perpetuity of regular periodic output of the various renewable resources without impairment of the productivity of the land.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35502 Legislative findings.

Sec. 35502. The legislature finds that:

(a) The earth's biological diversity is an important natural resource. Decreasing biological diversity is a concern.

(b) Most losses of biological diversity are unintended consequences of human activity.

(c) Humans depend on biological resources, including plants, animals, and microorganisms, for food, medicine, shelter, and other important products.

(d) Biological diversity is valuable as a source of intellectual and scientific knowledge, recreation, and aesthetic pleasure.

(e) Conserving biological diversity has economic implications.

(f) Reduced biological diversity may have potentially serious consequences for human welfare as resources for research and agricultural, medicinal, and industrial development are diminished.

(g) Reduced biological diversity may also potentially impact ecosystems and critical ecosystem processes that moderate climate, govern nutrient cycles and soil conservation and production, control pests and diseases, and degrade wastes and pollutants.

(h) Reduced biological diversity may diminish the raw materials available for scientific and technical advancement, including the development of improved varieties of cultivated plants and domesticated animals.

(i) Maintaining biological diversity through habitat protection and management is often less costly and more effective than efforts to save species once they become endangered.

(j) Because biological resources will be most important for future needs, study by the legislature regarding maintaining the diversity of living organisms in their natural habitats and the costs and benefits of doing so is prudent.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35503 State goal.

Sec. 35503. (1) It is the goal of this state to encourage the lasting conservation of biological diversity.

(2) This part does not require a state department or agency to alter its regulatory functions.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35504 Joint legislative working committee on biological diversity; creation; appointment of members; establishment, organization, and membership of scientific advisory boards; consultation with other qualified individuals; function; reports; meetings; compliance with open meetings act; writings available to public; public hearings; dissolution.

Sec. 35504. (1) The joint legislative working committee on biological diversity is created in the legislature.

The committee shall consist of 4 members of the senate appointed by the senate majority leader, 2 members of the house of representatives appointed by the republican leader of the house of representatives, and 2 members of the house of representatives appointed by the democratic leader of the house of representatives. Members of the committee shall be appointed by the senate majority leader and the republican and democratic leaders of the house of representatives within 30 days of March 23, 1994. At least 1 of the committee members appointed from the senate shall be a member of the minority party of the senate, and at least 1 of the committee members appointed from each house shall be a member of a standing committee that primarily addresses legislation pertaining to environmental protection and natural resources, or wildlife and fisheries management, and agriculture. The committee may establish and organize 1 or more scientific advisory boards to provide the committee with specific expertise as the committee considers necessary or helpful. If 1 or more scientific advisory boards are established, each board shall include individuals with expertise pertaining to the area of resource management at issue. The representatives shall include at least 1 individual employed by a state department or agency; 1 or more individuals employed by a university or college who work in applied research; and 1 or more individuals who work in basic research. The committee may consult with other individuals who are qualified representatives of industry and environmental groups. In fulfilling its duties under this part, the committee may consult with individuals and groups who are knowledgeable about, or interested in, biological diversity and conservation or are knowledgeable about scientific and technological issues related to biological diversity and its impact on human habitat.

(2) The function of the committee shall be to prepare a recommended state strategy for conservation of biological diversity and to report on the costs, benefits, and other implications of the strategy. Upon the request of the committee, state departments and state agencies shall submit reports containing the information required under section 35505 to the committee to enable the committee to prepare the state strategy and fulfill its functions under this part. The state strategy shall in part be based on information provided to the committee in these reports required under this section.

(3) The committee shall meet as soon as possible upon formation and then shall meet at least quarterly. The committee shall at its initial meeting develop a timeline establishing when specific reports are due from each of the reporting departments from which the committee requests reports. However, all reports required under section 35505(1) shall be submitted to the committee by a reporting department by December 30, 1994. The committee shall provide assistance to the reporting department as the committee considers necessary or helpful in developing the state strategy.

(4) The committee shall hold regularly scheduled meetings, and the business of the committee shall be conducted at public meetings held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

(5) A writing prepared, owned, used, in the possession of, or retained by the committee shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(6) The committee shall hold public hearings to solicit input from individuals and entities regarding biological diversity.

(7) The committee shall be dissolved on December 30, 1995.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35505 Reports; contents; additional information.

Sec. 35505. (1) The committee may require clear and concise reports containing the information listed under subsection (2) and, if applicable, subsection (3) from state departments and state agencies, including, but not limited to, the following:

(a) Department of natural resources.

(b) State transportation department.

(c) Department of commerce.

(d) Department of agriculture.

(e) Department of public health.

(f) Department of military affairs.

(2) Each reporting department shall prepare for the committee a report that contains an overview of all of the following:

(a) A report pertaining to those activities of the reporting departments that alter biological diversity, noting which ecosystems and species are impacted and the existence of and effectiveness of mitigation measures.

(b) Any other information determined by the committee to be necessary or helpful in preparing the state strategy.

(c) The costs and benefits of preserving biological diversity and mitigation measures.

(3) In addition to the information required under subsection (2), the department of natural resources and the department of agriculture shall include in their report, to the extent practical, examples of techniques that are used to improve the protection and maintenance of this state's biological diversity, and the long-term viability of ecosystems and ecosystem processes, including all of the following:

(a) Enhancement of scientific knowledge through improved and more complete biological surveys, and research designed to identify factors limiting population viability or persistence.

(b) Identification of habitats and species of special concern and methods to protect them.

(c) Improvement of management techniques based on scientific knowledge of the conservation of biological diversity.

(d) Effective restoration methods for ecosystems or species of concern.

(e) Broad-based education efforts regarding the importance of biological diversity and the need for conservation.

(f) Use of areas demonstrating management techniques that conserve or restore native biological diversity.

(g) Use of cooperative programs among government agencies, public and private ventures, and the public sector.

(h) Promotion of sustained yield of natural resources for human benefit.

(i) Any other technique to improve the protection and maintenance of this state's biological diversity, and the long-term viability of ecosystems and ecosystem processes whether or not the technique is in current use if supported by scientific knowledge.

(j) The costs and benefits associated with activities described in subdivisions (a) to (i).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

324.35506 Development of state strategy; factors; progress report to legislature; circulation of draft report; public hearing; report to legislature.

Sec. 35506. (1) Based on information received from the reporting departments and other sources identified in section 35504(1), the committee shall develop a state strategy that includes, but is not limited to, consideration of all of the following:

(a) Reduction of cumulative adverse impacts of all state departments and agencies on biological diversity.

(b) Responsibility of each reporting department to conserve biological diversity and determine the costs of such actions.

(c) Methods of cooperation among reporting departments, other states, and provinces concerning ecosystems management.

(d) Establishment of cooperative programs among governmental agencies, public and private ventures, universities and colleges, and the private sector.

(e) Identification of habitats and species of special concern and methods to protect them.

(f) Prevention of extinction of species.

(g) Provisions for the long-term viability of ecosystems and ecosystem processes.

(h) Development of areas demonstrating management techniques that conserve or restore native biological diversity.

(i) Development of broad-based educational efforts regarding the importance of biological diversity and the need for conservation.

(j) Development of criteria for evaluating the progress of this state in implementing the strategy.

(k) The effects on human beings or the environment, taking into account the economic, social, and environmental costs and benefits of the conservation of biological diversity.

(*l*) The effects of conserving biological diversity on agriculture and forestry.

(2) By December 30, 1994, the committee shall submit to the legislature a report detailing progress made toward development of the strategy.

(3) By June 30, 1995, the committee shall circulate a draft of the report described in subsection (4) and conduct a public hearing regarding the content of the draft report.

(4) By December 30, 1995, the committee shall approve and submit to the legislature a report containing all of the following:

(a) The recommended state strategy.

(b) Summaries of all written comments and reporting department reports received by the committee

pertaining to the work of the committee.

(c) An evaluation of reports submitted by reporting departments.

(d) An evaluation of the cumulative impacts of the reporting departments on the biological diversity of this state.

(e) Recommendations pertaining to legislative options.

(f) Recommendations regarding whether the definitions in this part should be revised.

(g) Recommendations regarding whether there is a need to establish a biological diversity education center to set research priorities and provide leadership and coordination pertaining to fulfilling the policy of this state to maintain biological diversity.

(h) Recommendations concerning research priorities and personnel training to facilitate the implementation of the state strategy.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: NREPA

PART 357
NATURAL BEAUTY ROADS

324.35701 Definitions.

Sec. 35701. As used in this part:

(a) "Board" means board of county road commissioners.

(b) "City street" means city major street or city local street as described in section 9 of Act No. 51 of the Public Acts of 1951, being section 247.659 of the Michigan Compiled Laws.

(c) "County local road" means county local road as described in section 4 of Act No. 51 of the Public Acts of 1951, being section 247.654 of the Michigan Compiled Laws.

(d) "Native vegetation" means original or indigenous plants of this state including trees, shrubs, vines, wild flowers, aquatic plants, or ground cover.

(e) "Natural" means in a state provided by nature, without human-made changes, wild, or uncultivated.

(f) "Street" means city street or village street.

(g) "Village street" means village major street or village local street as described in section 9 of Act No. 51 of the Public Acts of 1951.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

324.35702 Petition for designation; hearing; notice; resolution.

Sec. 35702. (1) Twenty-five or more freeholders of a township may apply by petition to the board for the county in which that township is located for designation of a county local road or portion of a county local road as a natural beauty road. Twenty-five or more freeholders of a city may petition the legislative body of the city for designation of a city street or a portion of a city street as a natural beauty street. Twenty-five or more freeholders of a village may petition the legislative body of the village for designation of a village street or a portion of a village street as a natural beauty street.

(2) Within 6 months after a petition is received, the board or the legislative body of the city or village shall hold a public hearing to consider designating the road or street described in the petition as a natural beauty road or natural beauty street, respectively. The hearing shall be held at a suitable place within the township in which the proposed natural beauty road is located or the city or village in which the proposed natural beauty street is located. At the hearing, a party or interested person may support or object to the proposed designation. The board, the legislative body of the city, or the legislative body of the village shall give notice of the hearing by publication at least once each week for 2 successive weeks in a newspaper of general circulation in the county, city, or village, respectively, and by posting 5 notices within the limits of the portion of the road or street to be designated, in public and conspicuous places. The posting shall be done and at least 1 publication in the newspaper shall be made not less than 10 days before the hearing.

(3) Within 30 days after the hearing, if the board, the legislative body of the city, or the legislative body of the village considers the designation desirable, it shall file with the county clerk, city clerk, or village clerk, respectively, a true copy of its resolution designating the portion of the county local road as a natural beauty road, the portion of the city street as a natural beauty street, or the portion of the village street as a natural beauty street, respectively.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

324.35703 Designation; petition requesting withdrawal; revocation of designation; determination; publication of notice; reversion to former status.

Sec. 35703. (1) Not more than 45 days after a board designates a road as a natural beauty road or the legislative body of a city or village designates a street as a natural beauty street, the property owners of record of 51% or more of the lineal footage along the natural beauty road or natural beauty street may submit a petition to the board or the legislative body of the city or village, respectively, requesting that the designation be withdrawn. If the petition is valid, the designation as a natural beauty road or natural beauty street shall be withdrawn.

(2) A board or the legislative body of a city or village may revoke a designation of a natural beauty road or natural beauty street after holding a public hearing in accordance with the procedure described in section 35702(2). Not more than 30 days after a hearing, if the board, the legislative body of the city, or the legislative body of the village by majority vote determines that the revocation is necessary, it shall file with the county clerk, city clerk, or village clerk, respectively, a notice of its determination and publish the notice in a newspaper of general circulation in the county, city, or village, respectively, once each week for 2 successive weeks. After publication of the notice, the road or street previously designated shall revert to its former status.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

324.35704 Guidelines and procedures for native vegetation preservation; rights of public utilities or governmental agencies or municipalities.

Sec. 35704. (1) The department shall develop uniform guidelines and procedures that may be adopted by a board to preserve native vegetation in a natural beauty road right-of-way from destruction or substantial damage by cutting, spraying, dusting, mowing, or other means. The department shall develop uniform guidelines that may be adopted by the legislative body of a city or village to preserve native vegetation in a natural beauty street right-of-way from destruction or substantial damage by cutting, spraying, dusting, mowing, or other means. Guidelines and procedures developed pursuant to this subsection shall not prohibit the application of accepted principles of sound forest management in a natural beauty road or natural beauty street right-of-way or prevent a local road authority from regulating speed and from taking actions to modify specific road features to correct traffic hazards that pose a direct and ongoing threat to motorists.

(2) The department may advise and consult with a board or a city or village legislative body on the application of the guidelines and procedures.

(3) A board or a city or village legislative body shall provide for a public hearing before an act that would result in substantial damage to native vegetation in the right-of-way of a natural beauty road or natural beauty street, respectively, is permitted.

(4) Subject to subsections (5), (6), and (7), prior to approval of any construction project or tree cutting that would significantly impact native vegetation within the right-of-way of a natural beauty road, the board shall notify the clerk of the city, village, or township within which the road lies of the proposed activity. If the city, village, or township desires to hold a public hearing on the proposed activity, the clerk of the city, village, or township shall notify the board within 7 days of the transmittal of notice by the board. The notice to the board shall include the date, time, and place of the township, city, or village hearing. The hearing shall take place within 14 days of the transmittal of notice to the board. A member of the board or a representative of the board shall attend the hearing. The city, village, or township clerk shall provide the board with a written report of testimony taken at the hearing within 10 days of the hearing. The board shall not approve the construction project or tree cutting until 12 days after notice of the proposed activity has been sent to the city, village, or township clerk, or if notification of a hearing is timely received by the board, until 12 days after the public hearing is held. The board shall consider, in approval or denial of the proposed activity, any report of testimony taken at the public hearing received from the city, village, or township.

(5) The notification and hearing provided for in subsection (4) are not required if the construction or tree cutting is necessitated by emergency conditions.

(6) This part does not affect the right of a public utility to control vegetation in connection with the

maintenance, repair, or replacement of public utility facilities constructed in a road or street before its designation as a natural beauty road or natural beauty street, or in connection with the construction, maintenance, repair, or replacement of public utility facilities crossing a natural beauty road or natural beauty street.

(7) This part does not affect or restrict the maintenance activities of a governmental agency or municipality having jurisdiction over a beauty road.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 119, Imd. Eff. Mar. 6, 1996.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

324.35705 Citizen's advisory committee; establishment; purpose.

Sec. 35705. The department may establish a citizen's advisory committee to assist in the formulation of proposals for guidelines and procedures.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

324.35706 Violation of guideline or procedure; complaint; civil action; default in payment of civil fine or costs.

Sec. 35706. (1) If there is a violation of a guideline or procedure adopted by a board, the legislative body of a city, or the legislative body of a village pursuant to section 35704, a complaint, signed by 5 or more freeholders of the township, city, or village, respectively, or by freeholders representing 10% or more of the lineal frontage along a natural beauty road or natural beauty street, may be filed with the county prosecutor, city attorney, or village attorney, respectively, or with the attorney general. The county prosecutor, the city attorney, the village attorney, or the attorney general, on behalf of the board, the legislative body of the city, the legislative body of the village, or the department, may commence a civil action seeking either of the following:

(a) A temporary or permanent injunction to enjoin the violation of the guideline or procedure.

(b) A civil fine of not more than $400.00 for the violation of the guideline or procedure.

(2) A default in the payment of a civil fine or costs ordered under this part or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Natural Beauty Roads

Popular name: NREPA

PART 358
ADOPT-A-SHORELINE PROGRAM

324.35801 Adopt-a-shoreline program; administration; purpose; rules; agreements with volunteer groups to implement program.

Sec. 35801. (1) The department shall administer a program entitled the adopt-a-shoreline program which shall be designed to remove litter from and to beautify state owned land along the state's shorelines. The program shall include public informational activities, but shall be directed primarily toward encouraging and facilitating the involvement of volunteer groups in litter cleanup work and assisting volunteer groups in selecting specific shoreline or shoreline segments for cleanup activities.

(2) The department may promulgate rules as necessary to implement the adopt-a-shoreline program. If the Michigan supreme court rules that sections 45 and 46 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.245 and 24.246 of the Michigan Compiled Laws, are unconstitutional, and a statute requiring legislative review of administrative rules is not enacted within 90 days after the Michigan supreme court ruling, the department shall not promulgate rules under this part.

(3) The department may enter into agreements with volunteer groups to implement the adopt-a-shoreline program. Agreements with volunteer groups shall include, but are not limited to, all of the following:

(a) Identification of the designated shoreline or shoreline segment. The volunteer group may request a

specific segment of the shoreline it wishes to adopt. In assisting volunteer groups in selecting sections of a shoreline, the department shall coordinate and cooperate with affected federal, state, and local management agencies, nonprofit organizations, and private landowners.

(b) Specification of the duties of the volunteer group which shall involve the removal of litter along the designated shoreline or shoreline segment at least once each year.

(c) Specification of the responsibilities of the volunteer group, including the volunteer group's agreement to abide by all rules related to the program that are adopted by the department.

(d) A specific designation of the length of time the volunteer group contracts to care for the designated shoreline or shoreline segment, which shall be for a period of time of not less than 2 years.

History: Add. 1996, Act 89, Imd. Eff. Feb. 27, 1996.

Compiler's note: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, Art 4, and violated the separation of powers provision of Const 1963, Art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. Blank v Department of Corrections, 462 Mich 103 (2000).

Popular name: Act 451

Popular name: NREPA

324.35802 Adopt-a-shoreline program; duties of department.

Sec. 35802. In implementing this part and the adopt-a-shoreline program, the department shall do all of the following:

(a) Create a recognition program that acknowledges the efforts of volunteer groups and the members of the groups that participate in the adopt-a-shoreline program.

(b) Provide safety information and assistance to the participating volunteer groups.

(c) Provide volunteer groups with natural resource information and educational materials.

History: Add. 1996, Act 89, Imd. Eff. Feb. 27, 1996.

Popular name: Act 451

Popular name: NREPA

324.35803 Data information sheets; compilation of information.

Sec. 35803. (1) The department shall provide volunteer groups conducting litter cleanup efforts with data information sheets and shall request that the volunteer groups record on the data information sheets the types of trash collected during the group's cleanup effort. The department shall request the data information to be forwarded to the department upon completion.

(2) The department shall compile information obtained from the data information sheets received pursuant to subsection (1) and shall include this information in the report prepared under section 35804.

History: Add. 1996, Act 89, Imd. Eff. Feb. 27, 1996.

Popular name: Act 451

Popular name: NREPA

324.35804 Annual report.

Sec. 35804. The department shall annually report to the standing committees of the legislature that primarily consider issues pertaining to the protection of natural resources and the environment on the implementation and progress of the adopt-a-shoreline program.

History: Add. 1996, Act 89, Imd. Eff. Feb. 27, 1996.

Popular name: Act 451

Popular name: NREPA

PART 359
ADOPT-A-RIVER PROGRAM

324.35901 Adopt-a-river program; administration; purpose; rules; agreements with volunteer groups to implement program.

Sec. 35901. (1) The department shall administer a program entitled the adopt-a-river program which shall be designed to remove litter from and to beautify the state's rivers and public land along the state's rivers. The program shall include public informational activities, but shall be directed primarily toward encouraging and facilitating the involvement of volunteer groups in litter cleanup work and assisting volunteer groups in

selecting specific river or stream segments for cleanup activities.

(2) The department may promulgate rules as necessary to implement the adopt-a-river program. If the Michigan supreme court rules that sections 45 and 46 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.245 and 24.246 of the Michigan Compiled Laws, are unconstitutional, and a statute requiring legislative review of administrative rules is not enacted within 90 days after the Michigan supreme court ruling, the department shall not promulgate rules under this part.

(3) The department may enter into agreements with volunteer groups to implement the adopt-a-river program. Agreements with volunteer groups shall include, but are not limited to, all of the following:

(a) Identification of the designated river or stream segment. The volunteer group may request a specific segment of the river or stream it wishes to adopt. In assisting volunteer groups in selecting sections of a river or stream, the department shall cooperate with affected federal, state, and local management agencies, nonprofit organizations, and private landowners.

(b) Specification of the duties of the volunteer group which shall involve the removal of litter along the designated river or stream segment at least once each year.

(c) Specification of the responsibilities of the volunteer group, including the volunteer group's agreement to abide by all rules related to the program that are adopted by the department.

(d) A specific designation of the length of time the volunteer group contracts to care for the designated river or stream segment, which shall be for a period of time of not less than 2 years.

History: Add. 1996, Act 88, Imd. Eff. Feb. 27, 1996.

Compiler's note: In separate opinions, the Michigan Supreme Court held that Section 45(8), (9), (10), and (12) and the second sentence of Section 46(1) ("An agency shall not file a rule ... until at least 10 days after the date of the certificate of approval by the committee or after the legislature adopts a concurrent resolution approving the rule.") of the Administrative Procedures Act of 1969, in providing for the Legislature's reservation of authority to approve or disapprove rules proposed by executive branch agencies, did not comply with the enactment and presentment requirements of Const 1963, Art 4, and violated the separation of powers provision of Const 1963, Art 3, and, therefore, were unconstitutional. These specified portions were declared to be severable with the remaining portions remaining effective. Blank v Department of Corrections, 462 Mich 103 (2000).

Popular name: Act 451

Popular name: NREPA

324.35902 Adopt-a-river program; duties of department.

Sec. 35902. In implementing this part and the adopt-a-river program, the department shall do all of the following:

(a) Create a recognition program that acknowledges the efforts of volunteer groups and the members of the groups that participate in the adopt-a-river program.

(b) Provide safety information and assistance to the volunteer groups.

(c) Provide volunteer groups with natural resource information and educational materials.

History: Add. 1996, Act 88, Imd. Eff. Feb. 27, 1996.

Popular name: Act 451

Popular name: NREPA

324.35903 Data information sheets; compilation of information.

Sec. 35903. (1) The department shall provide volunteer groups conducting litter cleanup efforts under this part with data information sheets and shall request that the volunteer groups record on the data information sheets the types of trash collected during the group's cleanup effort. The department shall request the data information to be forwarded to the department upon completion.

(2) The department shall compile information obtained from the data information sheets received pursuant to subsection (1) and shall include this information in the report prepared under section 35904.

History: Add. 1996, Act 88, Imd. Eff. Feb. 27, 1996.

Popular name: Act 451

Popular name: NREPA

324.35904 Annual report.

Sec. 35904. The department shall annually report to the standing committees of the legislature that primarily consider issues pertaining to the protection of natural resources and the environment on the implementation and progress of the adopt-a-river program.

History: Add. 1996, Act 88, Imd. Eff. Feb. 27, 1996.

Popular name: Act 451

Popular name: NREPA

PART 361
FARMLAND AND OPEN SPACE PRESERVATION

324.36101 Definitions.

Sec. 36101. As used in this part:

(a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(b) "Agricultural use" means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; maple syrup production; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.

(c) "Conservation district board" means that term as defined in section 9301.

(d) "Development" means an activity that materially alters or affects the existing conditions or use of any land.

(e) "Development rights" means an interest in land that includes the right to construct a building or structure, to improve land for development, to divide a parcel for development, or to extract minerals incidental to a permitted use or as set forth in an instrument recorded under this part.

(f) "Development rights agreement" means a restrictive covenant, evidenced by an instrument in which the owner and the state, for a term of years, agree to jointly hold the right to undertake development of the land, and that contains a covenant running with the land, for a term of years, not to undertake development, subject to permitted uses.

(g) "Development rights easement" means a grant, by an instrument, in which the owner relinquishes to the public in perpetuity or for a term of years the right to undertake development of the land, and that contains a covenant running with the land, not to undertake development, subject to permitted uses.

(h) "Farmland" means 1 or more of the following:

(*i*) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.

(*ii*) A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51% or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land.

(*iii*) A farm designated by the department of agriculture as a specialty farm in 1 ownership that has produced a gross annual income from an agricultural use of $2,000.00 or more. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.

(*iv*) Parcels of land in 1 ownership that are not contiguous but that constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.

(i) "Local governing body" means 1 of the following:

(*i*) With respect to farmland or open space land that is located in a city or village, the legislative body of the city or village.

(*ii*) With respect to farmland or open space land that is not located in a city or village but that is located in a township having a zoning ordinance in effect as provided by law, the township board of the township.

(*iii*) With respect to farmland or open space land that is not described in subparagraph (*i*) or (*ii*), the county board of commissioners.

(j) "Open space land" means 1 of the following:

(*i*) Lands defined as 1 or more of the following:

(A) Any undeveloped site included in a national registry of historic places or designated as a historic site pursuant to state or federal law.

(B) Riverfront ownership subject to designation under part 305, to the extent that full legal descriptions may be declared open space under the meaning of this part, if the undeveloped parcel or government lot

parcel or portions of the undeveloped parcel or government lot parcel as assessed and owned is affected by that part and lies within 1/4 mile of the river.

(C) Undeveloped lands designated as environmental areas under part 323, including unregulated portions of those lands.

(*ii*) Any other area approved by the local governing body, the preservation of which area in its present condition would conserve natural or scenic resources, including the promotion of the conservation of soils, wetlands, and beaches; the enhancement of recreation opportunities; the preservation of historic sites; and idle potential farmland of not less than 40 acres that is substantially undeveloped and because of its soil, terrain, and location is capable of being devoted to agricultural uses as identified by the department of agriculture.

(k) "Owner" means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor.

(*l*) "Permitted use" means any use expressly authorized within a development rights agreement, development rights easement, or agriculture conservation easement that is consistent with the farming operation or that does not alter the open space character of the land. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years. The state land use agency shall determine whether a use is a permitted use pursuant to section 36104a.

(m) "Person" includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association, or 2 or more persons having a joint or common interest in land.

(n) "Planning commission" means a planning commission created by the local governing body under 1945 PA 282, MCL 125.101 to 125.115, 1959 PA 168, MCL 125.321 to 125.333, or 1931 PA 285, MCL 125.31 to 125.45, as applicable.

(o) "Prohibited use" means a use that is not consistent with an agricultural use for farmland subject to a development rights agreement or is not consistent with the open space character of the land for lands subject to a development rights easement.

(p) "Property taxes" means general ad valorem taxes levied after January 1, 1974, on lands and structures in this state, including collection fees, but not including special assessments, penalties, or interest.

(q) "Regional planning commission" means a regional planning commission created pursuant to 1945 PA 281, MCL 125.11 to 125.25.

(r) "Regional planning district" means the planning and development regions as established by executive directive 1968-1, as amended, whose organizational structure is approved by the regional council.

(s) "State income tax act" means the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and in effect during the particular year of the reference to the act.

(t) "State land use agency" means the department of agriculture.

(u) "Substantially undeveloped" means any parcel or area of land essentially unimproved except for a dwelling, building, structure, road, or other improvement that is incidental to agricultural and open space uses.

(v) "Unique or critical land area" means agricultural or open space lands identified by the land use agency as an area that should be preserved.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2000, Act 262, Imd. Eff. June 29, 2000;—Am. 2008, Act 336, Imd. Eff. Dec. 23, 2008.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36102 Development rights agreement or easement; execution authorized; provisions.

Sec. 36102. (1) The state land use agency may execute a development rights agreement or easement on behalf of the state.

(2) The provisions of a development rights agreement or easement shall be consistent with the purposes of this part and shall not permit an action which will materially impair the character of the land involved.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36103 Development rights agreement or easement; effect of execution and acceptance; term; limitation; disposition; prior lien, lease, or interest not superseded; lien of state or

local governing body; subordination.

Sec. 36103. (1) The execution and acceptance of a development rights agreement or easement by the state or local governing body and the owner dedicates to the public the development rights in the land for the term specified in the instrument. A development rights agreement or easement shall be for an initial term of not less than 10 years. A development rights agreement or easement entered into after June 5, 1996 shall not be for a term of more than 90 years.

(2) The state or local governing body shall not sell, transfer, convey, relinquish, vacate, or otherwise dispose of a development rights agreement or easement except with the agreement of the owner as provided in sections 36111, 36111a, 36112, and 36113.

(3) An agreement or easement does not supersede any prior lien, lease, or interest that is properly recorded with the county register of deeds.

(4) A lien created under this part in favor of the state or a local governing body is subordinate to a lien of a mortgage that is recorded in the office of the register of deeds before the recording of the lien of the state or local governing body.

(5) The state shall subordinate its interest in a recorded agreement under section 36104 or an easement under section 36105 or 36106 to a subsequently recorded mortgage lien, lease, or interest if both of the following conditions are met:

(a) The parcel meets the requirements set forth under section 36111(2)(a) for parcels containing existing structures.

(b) The landowner requesting the subordination is an individual essential to the operation of the farm as defined in section 36110(5).

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2003, Act 36, Imd. Eff. July 3, 2003.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36104 Application for farmland development rights agreement; form; contents; notice; review, comments, and recommendations; approval or rejection; appeal; preparation, contents, execution, and recordation of agreement; reapplication; tax exemption.

Sec. 36104. (1) An owner of land desiring a farmland development rights agreement may apply by filing an application with the local governing body having jurisdiction under this part. The owner shall apply on a form prescribed by the state land use agency. The application shall contain information reasonably necessary to properly classify the land as farmland. This information shall include a land survey or a legal description of the land and a map showing the significant natural features and all structures and physical improvements located on the land.

(2) Upon receipt of the application, the local governing body shall notify the county planning commission or the regional planning commission and the soil conservation district agency. If the county has jurisdiction, it shall also notify the township board of the township in which the land is situated. If the land is within 3 miles of the boundary of a city or within 1 mile of the boundary of a village, the county or township governing body having jurisdiction shall notify the governing body of the city or village.

(3) An agency or local governing body receiving notice has 30 days to review, comment, and make recommendations to the local governing body with which the application is filed. These reviewing agencies do not have an approval or rejection power over the application.

(4) After considering the comments and recommendations of the reviewing agencies and local governing bodies, the local governing body holding the application shall approve or reject the application within 45 days after the application is received, unless that period is extended by agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon, and consistent with, rules promulgated by the state land use agency under section 36116.

(5) If an application for a farmland development rights agreement is approved by the local governing body having jurisdiction, the local governing body shall forward a copy, along with the comments and recommendations of the reviewing bodies, to the state land use agency. The application shall contain a statement from the assessing officer where the property is located specifying the current fair market value of the land and structures in compliance with the agricultural section of the Michigan state tax commission assessor manual. If action is not taken by the local governing body within the time prescribed or agreed upon, the applicant may proceed as provided in subsection (6) as if the application was rejected.

(6) If the application for a farmland development rights agreement is rejected by the local governing body,

the local governing body shall return the application to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection by submitting the application to the state land use agency.

(7) The state land use agency, within 60 days after a farmland development rights agreement application is received under subsection (5) or (6), shall approve or reject the application. A rejection of an application for a farmland development rights agreement that has been approved by a local governing body by the state land use agency shall be for nonconformance with section 36101(f) only. If the application is approved by the state land use agency, the state land use agency shall prepare a farmland development rights agreement that includes all of the following provisions:

(a) A structure shall not be built on the land except for use consistent with farm operations, which includes a residence for an individual essential to the operation of the farm under section 36111(2)(b), or lines for utility transmission or distribution purposes or with the approval of the local governing body and the state land use agency.

(b) Land improvements shall not be made except for use consistent with farm operations or with the approval of the local governing body and the state land use agency.

(c) Any interest in the land shall not be sold except a scenic, access, or utility easement that does not substantially hinder farm operations.

(d) Public access is not permitted on the land unless agreed to by the owner.

(e) Any other condition and restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as farmland.

(8) A copy of the approved application and the farmland development rights agreement shall be forwarded to the applicant for execution. An application that is approved by the local governing body by November 1 shall take effect for the current tax year.

(9) If the owner executes the farmland development rights agreement, the owner shall return it to the state land use agency for execution on behalf of the state. The state land use agency shall record the executed development rights agreement with the register of deeds of the county in which the land is situated and shall notify the applicant, the local governing body and its assessing office, all reviewing agencies, and the department of treasury.

(10) If an application for a farmland development rights agreement is rejected by the state land use agency, the state land use agency shall notify the affected local governing body, all reviewing agencies concerned, and the applicant with a written statement containing the reasons for rejection. An applicant receiving a rejection from the state land use agency may appeal the rejection pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(11) An applicant may reapply for a farmland development rights agreement following a 1-year waiting period.

(12) The value of the jointly owned development rights as expressed in a farmland development rights agreement is not exempt from ad valorem taxation and shall be assessed to the owner of the land as part of the value of that land.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36104a Permitted use; criteria.

Sec. 36104a. In determining whether a use is a permitted use, the state land use agency shall consider the following criteria:

(a) Whether the use adversely affects the productivity of farmland or adversely affects the character of open space land.

(b) Whether the use materially alters or negatively affects the existing conditions or use of the land.

(c) Whether the use substantially alters the agricultural use of farmland subject to a development rights agreement or substantially alters the natural character of open space land subject to an open space easement.

(d) Whether the use results in a material alteration of an existing structure to a nonagricultural use.

(e) Whether the use conforms with all applicable federal, state, and local laws and ordinances.

History: Add. 1996, Act 233, Imd. Eff. June 5, 1996.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36105 Land subject to MCL 324.36101(j)(i); application for open space development rights easement; approval or rejection; provisions; tax exemption.

Sec. 36105. (1) If an owner of open space land desires an open space development rights easement, and the land is subject to section 36101(j)(*i*), the procedures for filing an application provided by the state land use agency shall follow as provided in section 36104, except section 36104(7) and (12) do not apply to an open space development rights easement.

(2) The state land use agency, within 60 days after the open space development rights easement application is received, shall approve or reject the application. If the application is approved by the state land use agency, the state land use agency shall prepare an open space development rights easement that includes the following provisions:

(a) A structure shall not be built on the land without the approval of the state land use agency.

(b) Improvement to the land shall not be made without the approval of the state land use agency.

(c) An interest in the land shall not be sold, except for a scenic, access, or utility easement that does not substantially hinder the character of the open space land.

(d) Access to the open space land may be provided if access is agreed to by the owner and if access will not jeopardize the conditions of the land.

(e) Any other condition or restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as open space land.

(3) Upon receipt of the application, the state land use agency shall notify the state tax commission. Upon notification, the state tax commission shall within 60 days make an on-site appraisal of the land in compliance with the Michigan state tax commission assessors manual. The application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights. The state land use agency shall submit to the legislature each application for an open space development rights easement and an analysis of its cost to the state. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body if lost revenues are indicated. A copy of the approved application and the open space development rights easement shall be forwarded by the state land use agency to the applicant for execution and to the local assessing office where the land is situated.

(4) If an application for an open space development rights easement is rejected under subsection (2), the applicant may reapply for an open space development rights easement beginning 1 year after the rejection.

(5) The development rights held by the state as expressed in an open space development rights easement under this section are exempt from ad valorem taxation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36106 Land subject to MCL 324.36101(j)(ii); application for open space development rights easement; form; contents; notice; review, comments, and recommendations; approval or rejection; preparation and contents of easement; appraisal; statement of fair market value; execution and recordation of easement; forwarding copies of easement; appeal; legislative approval; costs; reapplication; tax exemption.

Sec. 36106. (1) An owner of open space land desiring an open space development rights easement whose land is subject to section 36101(j)(*ii*) may apply by filing an application with the local governing body. The application shall be made on a form prescribed by the state land use agency. The application shall contain information reasonably necessary to properly identify the land as open space. This information shall include a land survey or a legal description of the land and a map showing the significant natural features and all structures and physical improvements located on the land.

(2) Upon receipt of an application, the local governing body shall notify the county planning commission, the regional planning commission, and the soil conservation district agency. If the local governing body is the county board of commissioners, the county board shall also notify the township board of the township in which the land is situated. If the land is within 3 miles of the boundary of a city or within 1 mile of the boundary of a village, the local governing body shall notify the governing body of the city or village.

(3) An entity receiving notice under subsection (2) has 30 days to review, comment, and make recommendations to the local governing body with which the application was filed.

(4) The local governing body shall approve or reject the application after considering the comments and

recommendations of the reviewing entities and within 45 days after the application was received by the local governing body, unless that period is extended by agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon, and consistent with, rules promulgated by the state land use agency under section 36116. If the local governing body does not act within the time prescribed or agreed upon, the applicant may proceed as provided in subsection (9) as if the application was rejected.

(5) If the application is approved by the local governing body, the local governing body shall prepare the easement. If the application is approved by the state land use agency on appeal, the state land use agency shall prepare the easement. An easement prepared under this section shall contain all of the following provisions:

(a) A structure shall not be built on the land without the approval of the local governing body.

(b) An improvement to the land shall not be made without the approval of the local governing body.

(c) An interest in the land shall not be sold, except for a scenic, access, or utility easement that does not substantially hinder the character of the open space land.

(d) Public access to the open space land may be provided if agreed upon by the owner and if access will not jeopardize the conditions of the land.

(e) Any other condition or restriction on the land as agreed to by both parties that is considered necessary to preserve the land or appropriate portions of it as open space land.

(6) Upon receipt of the application, the local governing body shall direct either the local assessing officer or an independent certified assessor to make an on-site appraisal of the land within 30 days in compliance with the Michigan state tax commission assessors manual. The approved application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights, if any. A copy of the approved application and the development rights easement shall be forwarded to the applicant for his or her execution.

(7) If the owner of the land executes the approved easement, it shall be returned to the local governing body for its execution. The local governing body shall record the development rights easement with the register of deeds of the county. A copy of the approved easement shall be forwarded to the local assessing office and to the state land use agency for their information.

(8) The decision of the local governing body may be appealed to the state land use agency, pursuant to subsection (9).

(9) If an application for an open space development rights easement is rejected by the local governing body, the local governing body shall notify the applicant and all reviewing entities with a written statement of the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the state land use agency. The state land use agency shall have 60 days to approve or reject the application. The state land use agency shall submit to the legislature each approved application for an open space development rights easement and an analysis of its cost. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body where lost revenues are indicated. A copy of the approved application and an appropriate easement shall be forwarded by the state land use agency to the applicant for execution and to the local governing body where the land is situated.

(10) If an application for an open space development rights easement is rejected under subsection (4), the applicant may reapply for an open space development rights easement beginning 1 year after the final rejection.

(11) The development rights held by the local governing body as expressed in an open space development rights easement are exempt from ad valorem taxation.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36107 Notice of owners' intentions regarding extension or expiration of agreement or easement; notice of lien.

Sec. 36107. (1) All participants owning land contained under a development rights agreement or easement shall notify, on a form provided by the state land use agency for informational purposes only, the state or the local governing body holding the development rights, 6 months before the natural termination date of the development rights agreement or easement, of the owners' intentions regarding whether the agreement or easement should be extended or allowed to expire.

(2) The state land use agency shall notify the landowner via first-class mail at least 7 years before the

expiration of a development rights agreement or easement that a lien may be placed at the time of expiration on the enrolled land in accordance with section 36111(8) if the landowner does not extend the agreement or easement and shall indicate to the landowner the option of not claiming credits during all or a portion of the next 7 years.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36108 Special assessments.

Sec. 36108. (1) A city, village, township, county, or other governmental agency shall not impose special assessments for sanitary sewers, water, lights, or nonfarm drainage on land for which a development rights agreement or easement has been recorded, except for years before 1995 as to a dwelling or a nonfarm structure located on the land, unless the assessments were imposed before the recording of the development rights agreement or easement.

(2) Land covered by this exemption shall be denied use of an improvement created by the special assessment until it has paid that portion of the special assessment directly attributable to the actual use of the improvement created by the special assessment.

(3) Upon termination of a development rights agreement or easement that has been exempt from a special assessment under this section, a city, village, township, county, or other governmental agency may impose the previously exempted special assessment. However, the amount of that special assessment shall not exceed the amount the special assessment would have been at the initial time of exemption, and shall not be subject to interest or penalty.

(4) If a dwelling or a nonfarm structure located on land covered by a development rights agreement or easement is required under the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, to connect to an improvement created by a special assessment, the owner of that dwelling or nonfarm structure shall pay only that portion of the special assessment directly attributable to the actual use of the improvement created by the special assessment.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36109 Credit against state income tax or state single business tax.

Sec. 36109. (1) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 who is required or eligible to file a return as an individual or a claimant under the state income tax act may claim a credit against the state income tax liability for the amount by which the property taxes on the land and structures used in the farming operation, including the homestead, restricted by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the household income as defined in section 508 of the income tax act of 1967, 1967 PA 281, MCL 206.508, excluding a deduction if taken under section 613 of the internal revenue code of 1986, 26 USC 613. For the purposes of this section, all of the following apply:

(a) A partner in a partnership is considered an owner of farmland and related buildings owned by the partnership and covered by a development rights agreement, agricultural conservation easement, or purchase of development rights. A partner is considered to pay a proportion of the property taxes on that property equal to the partner's share of ownership of capital or distributive share of ordinary income as reported by the partnership to the internal revenue service or, if the partnership is not required to report that information to the internal revenue service, as provided in the partnership agreement or, if there is no written partnership agreement, a statement signed by all the partners. A partner claiming a credit under this section based upon the partnership agreement or a statement shall file a copy of the agreement or statement with his or her income tax return. If the agreement or statement is not filed, the department of treasury shall deny the credit. All partners in a partnership claiming the credit allowed under this section shall compute the credit using the same basis for the apportionment of the property taxes.

(b) A shareholder of a corporation that has filed a proper election under subchapter S of chapter 1 of subtitle A of the internal revenue code of 1986, 26 USC 1361 to 1379, is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the corporation. A

shareholder is considered to pay a proportion of the property taxes on that property equal to the shareholder's percentage of stock ownership for the tax year as reported by the corporation to the internal revenue service. Except as provided in subsection (8), this subdivision applies to tax years beginning after 1987.

(c) Except as otherwise provided in this subdivision, an individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease is considered the owner of that property if it is farmland and related buildings covered by a development rights agreement. Beginning January 1, 1986, if an individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease enters into a written agreement with the person holding the remainder interest in that land and the written agreement apportions the property taxes in the same manner as revenue and expenses, the life lease or life estate holder and the person holding the remainder interest may claim the credit under this act as it is apportioned to them under the written agreement upon filing a copy of the written agreement with the return.

(d) If a trust holds farmland and related buildings covered by a development rights agreement and an individual is treated under subpart E of subchapter J of subchapter A of chapter 1 of the internal revenue code of 1986, 26 USC 671 to 679, as the owner of that portion of the trust that includes the farmland and related buildings, that individual is considered the owner of that property.

(e) An individual who is the sole beneficiary of a trust that is the result of the death of that individual's spouse is considered the owner of farmland and related buildings covered by a development rights agreement and held by the trust if the trust conforms to all of the following:

(*i*) One hundred percent of the trust income is distributed to the beneficiary in the tax year in which the trust receives the income.

(*ii*) The trust terms do not provide that any portion of the trust is to be paid, set aside, or otherwise used in a manner that would qualify for the deduction allowed by section 642(c) of the internal revenue code of 1986, 26 USC 642.

(f) A member in a limited liability company is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the limited liability company. A member is considered to pay a proportion of the property taxes on that property equal to the member's share of ownership or distributive share of ordinary income as reported by the limited liability company to the internal revenue service.

(2) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 to whom subsection (1) does not apply may claim a credit under the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, for the amount by which the property taxes on the land and structures used in farming operations restricted by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the adjusted business income of the owner as defined in section 36 of the former single business tax act, 1975 PA 228, or the business income tax base of the owner as defined in section 201 of the Michigan business tax act, 2007 PA 36, MCL 208.1201, plus compensation to shareholders not included in adjusted business income or the business income tax base, excluding any deductions if taken under section 613 of the internal revenue code of 1986, 26 USC 613. When calculating adjusted business income for tax years beginning before 1987, federal taxable income shall not be less than zero for the purposes of this subsection only. A participant is not eligible to claim a credit and refund against the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, unless the participant demonstrates that the participant's agricultural gross receipts of the farming operation exceed 5 times the property taxes on the land for each of 3 out of the 5 tax years immediately preceding the year in which the credit is claimed. This eligibility requirement does not apply to those participants who executed farmland development rights agreements under this part before January 1, 1978. A participant may compare, during the contract period, the average of the most recent 3 years of agricultural gross receipts to property taxes in the first year that the participant entered the program under the present contract in calculating the gross receipts qualification. Once an election is made by the participant to compute the benefit in this manner, all future calculations shall be made in the same manner.

(3) If the farmland and related buildings covered by a development rights agreement under section 36104 or an agricultural conservation easement or purchase of development rights under section 36111b or 36206 are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband

and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code of 1986, 26 USC 151, is allowable to another owner of the property shall not be considered an owner.

(4) A beneficiary of an estate or trust to which subsection (1) does not apply is entitled to the same percentage of the credit provided in this section as that person's percentage of all other distributions by the estate or trust.

(5) If the allowable amount of the credit claimed exceeds the state income tax or the state business tax otherwise due for the tax year or if there is no state income tax or the state business tax due for the tax year, the amount of the claim not used as an offset against the state income tax or the state business tax, after examination and review, shall be approved for payment to the claimant pursuant to 1941 PA 122, MCL 205.1 to 205.31. The total credit allowable under this part and chapter 9 of the income tax act of 1967, 1967 PA 281, MCL 206.501 to 206.532, or the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, shall not exceed the total property tax due and payable by the claimant in that year. The amount the credit exceeds the property tax due and payable shall be deducted from the credit claimed under this part.

(6) For purposes of audit, review, determination, appeals, hearings, notices, assessments, and administration relating to the credit program provided by this section, the state income tax act, 1967 PA 281, MCL 206.1 to 206.36, the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, applies according to which tax the credit is claimed against. If an individual is allowed to claim a credit under subsection (1) based upon property owned or held by a partnership, S corporation, or trust, the department of treasury may require that the individual furnish to the department a copy of a tax return, or portion of a tax return, and supporting schedules that the partnership, S corporation, or trust files under the internal revenue code.

(7) The department of treasury shall account separately for payments under this part and not combine them with other credit programs. A payment made to a claimant for a credit claimed under this part shall be issued by 1 or more warrants made out to the county treasurer in each county in which the claimant's property is located and the claimant, unless the claimant specifies on the return that a copy of the receipt showing payment of the property taxes that became a lien in the year for which the credit is claimed, or that became a lien in the year before the year for which the credit is claimed, is attached to the income tax or business tax return filed by the claimant. If the claimant specifies that a copy of the receipt is attached to the return, the payment shall be made directly to the claimant. A warrant made out to a claimant and a county treasurer shall be used first to pay delinquent property taxes, interest, penalties, and fees on property restricted by the development rights agreement. If the warrant exceeds the amount of delinquent taxes, interest, penalties, and fees, the county treasurer shall remit the excess to the claimant. If a claimant falsely specifies that the receipt showing payment of the property taxes is attached to the return and if the property taxes on the land subject to that development rights agreement were not paid before the return was filed, all future payments to that claimant of credits claimed under this act attributable to that development rights agreement may be made payable to the county treasurer of the county in which the property subject to the development rights agreement is located and to that claimant.

(8) For property taxes levied after 1987, a person that was an S corporation and had entered into a development rights agreement before January 1, 1989, and paid property taxes on that property, may claim the credit allowed by this section as an owner eligible under subsection (2). A subchapter S corporation claiming a credit as permitted by this subsection for taxes levied in 1988 through 1990 shall claim the credit by filing an amended return under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145. If a subchapter S corporation files an amended return as permitted by this subsection and if a shareholder of the subchapter S corporation claimed a credit under subsection (1)(b) for the same property taxes, the shareholder shall file an amended return under the state income tax act. A subchapter S corporation is not entitled to a credit under this subsection until all of its shareholders file the amended returns required by this subsection. The department of treasury shall first apply a credit due to a subchapter S corporation under this subsection to repay credits claimed under this section by the subchapter S corporation's shareholders for property taxes levied in 1988 through 1990 and shall refund any remaining credit to the S corporation. Interest or penalty is not due or payable on an income tax liability resulting from an amended return required by this subsection. A subchapter S corporation electing to claim a credit as an owner eligible under subsection (2) shall not claim a credit under subsection (1) for property taxes levied after 1987.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2000, Act 421, Eff. Mar. 28, 2001;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002;—Am. 2007, Act 174, Imd. Eff. Dec. 21, 2007.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36110 Sale of land; notice; death or disability of owner.

Sec. 36110. (1) Land subject to a development rights agreement or easement may be sold without penalty under sections 36111, 36112, and 36113, if the use of the land by the successor in title complies with the provisions contained in the development rights agreement or easement. The seller shall notify the governmental authority having jurisdiction over the development rights of the change in ownership.

(2) If the owner of land subject to a development rights agreement or easement dies or becomes totally and permanently disabled or when an individual essential to the operation of the farm dies or becomes totally and permanently disabled, the land may be relinquished from the program under this part and is subject to a lien pursuant to sections 36111(11), 36112(7), and 36113(7). A request for relinquishment under this section shall be made within 3 years from the date of death or disability. A request for relinquishment under this subsection shall be made only by the owner in case of a disability or, in case of death, the person who becomes the owner through survivorship or inheritance.

(3) If an owner of land subject to a development rights agreement becomes totally and permanently disabled or dies, land containing structures that were present before the recording of the development rights agreement may be relinquished from the agreement, upon request of the disabled agreement holder or upon request of the person who becomes an owner through survivorship or inheritance, and upon approval of the local governing body and the state land use agency. Not more than 2 acres may be relinquished under this subsection unless additional land area is needed to encompass all of the buildings located on the parcel, in which case not more than 5 acres may be relinquished. If the parcel proposed to be relinquished is less in area than the minimum parcel size required by local zoning, the parcel may not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size. The portion of the farmland relinquished from the development rights agreement under this subsection is subject to a lien pursuant to section 36111(11).

(4) The land described in a development rights agreement may be divided into smaller parcels of land, each of which shall be covered by a separate development rights agreement and each of which shall be eligible for subsequent renewal. The separate development rights agreements shall contain the same terms and conditions as the original development rights agreement. The smaller parcels created by the division must meet the minimum requirements for being enrolled under this act or be 40 acres or more in size. Farmland may be divided once under this subsection without fee by the state land use agency. The state land use agency may charge a reasonable fee not greater than the state land use agency's actual cost of dividing the agreement for all subsequent divisions of that farmland. When a division of a development rights agreement is made under this subsection and is executed and recorded, the state land use agency shall notify the applicant, the local governing body and its assessing office, all reviewing agencies, and the department of treasury.

(5) As used in this section, “individual essential to the operation of the farm” means a co-owner, partner, shareholder, farm manager, or family member, who, to a material extent, cultivates, operates, or manages farmland under this act. An individual is considered involved to a material extent if that individual does 1 or more of the following:

(a) Has a financial interest equal to or greater than 1/2 the cost of producing the crops, livestock, or products and inspects and advises and consults with the owner on production activities.

(b) Works 1,040 hours or more annually in activities connected with production of the farming operation.

(6) The state land use agency may charge and collect a fee of $25.00 to process each change of ownership under subsection (1) or each division under subsection (4). The fee collected under this subsection shall be used by the state land use agency to administer this act.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36111 Expiration or relinquishment of development rights agreement.

Sec. 36111. (1) A development rights agreement expires at the expiration of the term of the agreement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding development rights agreements, the owner is entitled to automatic renewal of the farmland covered by the agreement upon written request of the owner. A development rights agreement may be renewed for a term of not less than 7 years. If a development rights agreement is renewed, the state land use agency shall send a copy of the renewal contract to the local governing body of the local unit of

government in which the farmland is located.

(2) A development rights agreement or a portion of the farmland covered by a development rights agreement may be relinquished as provided in this section and section 36111a. Farmland may be relinquished by this state before a termination date contained in the instrument under either of the following circumstances:

(a) If approved by the local governing body and the state land use agency, land containing structures that were present before the recording of the development rights agreement may be relinquished from the agreement. Not more than 2 acres may be relinquished under this subdivision unless additional land area is needed to encompass all of the buildings located on the parcel, in which case not more than 5 acres may be relinquished. If the parcel proposed to be relinquished is less in area than the minimum parcel size required by local zoning, the parcel may not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size.

(b) If approved by the local governing body and the state land use agency, land may be relinquished from the agreement for the construction of a residence by an individual essential to the operation of the farm as defined in section 36110(5). Not more than 2 acres may be relinquished under this subdivision. If the parcel proposed to be relinquished is less in area than the minimum parcel size required by local zoning, the parcel may not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size.

(3) Until April 1, 1997, if an owner who entered into or renewed a development rights agreement before April 15, 1994 makes a request, in writing, to the state land use agency, to terminate that development rights agreement with respect to all or a portion of the farmland covered by the agreement, the state land use agency shall approve the request and relinquish that farmland from the development rights agreement. If farmland is relinquished under this subsection, the state land use agency shall notify the local governing body of the local unit of government in which the land is located of the relinquishment.

(4) If the request for relinquishment of the development rights agreement is approved, the state land use agency shall prepare an instrument, subject to subsections (5), (6), (7), and (8), and record it with the register of deeds of the county in which the land is situated.

(5) If a development rights agreement or a portion of a development rights agreement is to be relinquished pursuant to subsection (2) or section 36111a, the state land use agency shall record a lien against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by an owner for that property under the agreement under section 36109, attributable to the property formerly subject to the development rights agreement, plus interest at the rate of 6% per annum simple interest from the time the credit was received until the lien is placed on the property.

(6) If the property being relinquished from the development rights agreement is less than all of the property subject to that development rights agreement, the allocated tax credit for the development rights agreement shall be multiplied by the property's share of the taxable value of the agreement. As used in this subsection:

(a) “The allocated tax credit” means the amount obtained by multiplying the owner's total farmland preservation credit claimed in that year on all agreements by the quotient of the ad valorem property tax levied in that year on property subject to the development rights agreement that included the property being relinquished from the agreement divided by the total property taxes levied on property subject to any development rights agreement and used in determining the farmland preservation credit in that year.

(b) “The property's share of the taxable value of the agreement” means the quotient of the taxable value of the property being relinquished from the agreement divided by the total taxable value of property subject to the development rights agreement that included the property being relinquished from the agreement. For years before 1995, taxable value means assessed value.

(7) Thirty days before the recording of a lien under this section, the state land use agency shall notify the owner of the farmland subject to the development rights agreement of the amount of the lien, including interest, if any. If the lien amount is paid before 30 days after the owner is notified, the lien shall not be recorded. The lien may be paid and discharged at any time and is payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former development rights agreement. The lien shall be discharged upon renewal or reentry in a development rights agreement, except that a subsequent lien shall not be less than the lien discharged.

(8) Upon the termination of all or a portion of the development rights agreement under subsection (3), the termination of a development rights agreement under subsection (13), or, subject to subsection (15), the termination of a development rights agreement under subsection (1), the state land use agency shall prepare and record a lien, if any, against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by the owner under section 36109, attributable to the property formerly subject to the development rights agreement.

The lien shall be without interest or penalty and is payable subject to subsection (7).

(9) Upon termination of a development rights agreement, the state land use agency shall notify the department of treasury for their records.

(10) Until October 1, 2000, the proceeds from lien payments made under this part shall be used by the state land use agency to administer this part and, pursuant to section 36111b, to purchase development rights on farmland that does not necessitate direct purchase of the fee interest in the land. Beginning on October 1, 2000, the unappropriated proceeds from lien payments made under this part shall be forwarded to the state treasurer for deposit in the agricultural preservation fund created in section 36202. On October 1, 2000, all unexpended proceeds from lien payments made under this part that are held by the state shall be transferred to the agricultural preservation fund created in section 36202.

(11) Upon the relinquishment of all of the farmland under section 36110(2) or a portion of the farmland under section 36110(3), the state land use agency shall prepare and record a lien against the property formerly subject to a development rights agreement in an amount calculated as follows:

(a) Establishing a term of years by multiplying 7 by a fraction, the numerator of which is the number of years the farmland was under the development rights agreement, including any extensions, and the denominator of which is the number representing the term of years of that agreement, including any extensions.

(b) The lien amount equals the total amount of the allocated tax credit claimed attributable to that development rights agreement in the immediately preceding term of years as determined in subdivision (a).

(12) When a lien is paid under this section, the state land use agency shall prepare and record a discharge of lien with the register of deeds in the county in which the land is located. The discharge of lien shall specifically state that the lien has been paid in full, that the lien is discharged, that the development rights agreement and accompanying contract are terminated, and that the state has no further interest in the land under that agreement.

(13) An owner of farmland, upon written request to the state land use agency on or before April 1, 1997, may elect to have the remaining term of the development rights agreement reduced to 7 years if the farmland has been subject to that development rights agreement for 10 or more years. If the farmland has not been subject to a development rights agreement for 10 or more years, an owner of farmland may, upon written request to the state land use agency on or before April 1, 1997, elect to have the term of the development rights agreement reduced to 17 years from the initial year of enrollment.

(14) A farmland development rights agreement is automatically relinquished when the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206.

(15) If, upon expiration of the term of a farmland development rights agreement, the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206 or if a farmland development rights agreement is automatically relinquished under subsection (14), the farmland is not subject to a lien under this section.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995;—Am. 1995, Act 173, Imd. Eff. Oct. 9, 1995;—Am. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 1996, Act 567, Imd. Eff. Jan. 16, 1997;—Am. 2000, Act 262, Imd. Eff. June 29, 2000;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36111a Relinquishment of development rights agreement; conditions; "economic viability" defined.

Sec. 36111a. (1) Upon request from a landowner and a local governing body, the state land use agency shall relinquish farmland from the development rights agreement if 1 or both of the following occur:

(a) The local governing body determines 1 or more of the following:

(*i*) That, because of the quality of the farmland, agricultural production cannot be made economically viable with generally accepted agricultural and management practices.

(*ii*) That surrounding conditions impose physical obstacles to the agricultural operation or prohibit essential agricultural practices.

(*iii*) That significant natural physical changes in the farmland have occurred that are generally irreversible and permanently limit the productivity of the farmland.

(*iv*) That a court order restricts the use of the farmland so that agricultural production cannot be made economically viable.

(b) The local governing body determines that the relinquishment is in the public interest and that the

farmland to be relinquished meets 1 or more of the following conditions:

(*i*) The farmland is to be owned, operated, and maintained by a public body for a public use.

(*ii*) The farmland had been zoned for the immediately preceding 3 years for a commercial or industrial use.

(*iii*) The farmland is zoned for commercial or industrial use and the relinquishment of the farmland will be mitigated by 1 of the following means:

(A) For every 1 acre of farmland to be relinquished, an agricultural conservation easement will be acquired over 2 acres of farmland of comparable or better quality located within the same local unit of government where the farmland to be relinquished is located. The agricultural conservation easement shall be held by the local unit of government where the farmland to be relinquished is located or, if the local governing body declines to hold the agricultural conservation easement, by the state land use agency.

(B) If an agricultural conservation easement cannot be acquired as provided under sub-subparagraph (A), there will be deposited into the state agricultural preservation fund created in section 36202 an amount equal to twice the value of the development rights to the farmland being relinquished, as determined by a certified appraisal.

(*iv*) The farmland is to be owned, operated, and maintained by an organization exempt from taxation under section 501(c)(3) of the internal revenue code of 1986, 26 U.S.C. 501, and the relinquishment will be beneficial to the local community.

(2) In determining public interest under subsection (1)(b), the governing body shall consider all of the following:

(a) The long-term effect of the relinquishment upon the preservation and enhancement of agriculture in the surrounding area, including any nonfarm encroachment upon other agricultural operations in the surrounding area.

(b) Any other reasonable and prudent site alternatives to the farmland to be relinquished.

(c) Any infrastructure changes and costs to the local governmental unit that will result from the development of the farmland to be relinquished.

(3) If a landowner's relinquishment application under this section is denied by the local governing body, the landowner may appeal that denial to the state land use agency. In determining whether to grant the appeal and approve the relinquishment, the state land use agency shall follow the criteria established in subsection (1)(a) or follow the criteria in subsection (1)(b) and consider the factors described in subsection (2).

(4) The state land use agency shall review an application approved by the local governing body to verify that the criteria provided in subsection (1)(a) were met or the criteria in subsection (1)(b) were met and the factors in subsection (2) were considered. If the local governing body did not render a determination in accordance with this subsection, the state land use agency shall not relinquish the farmland from the development rights agreement.

(5) A local governing body may elect to waive its right to make a relinquishment determination under subsection (1)(a) or (b) by providing written notice of that election to the state land use agency. The written notice shall grant the state land use agency sole authority to grant or deny the application as provided in this section.

(6) A decision by the state land use agency to grant or deny an application for relinquishment under this section that adversely affects a land owner or a local governing body is subject to a contested case hearing as provided under this act and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(7) As used in this section, “economic viability” means that the cash flow returning to the farming operation is positive. The local governing body or state land use agency shall evaluate an application for relinquishment, and determine the economic viability of the affected farming operation, by doing all of the following:

(a) Estimating crop, livestock, or product value of the farmland using locally accepted production methods and local United States department of agriculture yield capabilities for the specific soil types and average price for crop, livestock, or product over the past 5 years.

(b) Adding average yearly property tax credits afforded by the development rights agreement over the immediately preceding 5-year period.

(c) Subtracting estimated expenses directly attributed to the production of the crop, livestock, or product, including, but not limited to, seed, fertilizer, insecticide, building and machinery repair, drying, trucking, and property taxes.

(d) Subtracting the estimated cost of the operator's labor and management time at rates established by the United States department of agriculture for “all labor”, Great Lakes area, as published in the United States department of agriculture labor reports.

(e) Subtracting typical capital replacement cost per acre of nonland assets using a useful life depreciation rate for comparable farming operations.

History: Add. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36111b Development rights or acquisition of agricultural conservation easements; application; selection criteria and scoring system; notification; points; determination of development rights value; approval by director; installment purchase plan; provisions for protection of farmland; termination of easements; value development rights in event of condemnation.

Sec. 36111b. (1) An application submitted under section 36111(10) for purchase of development rights or acquisition of agricultural conservation easements shall be evaluated and ranked according to selection criteria and a scoring system approved by the commission of agriculture. In developing a point system for selecting the parcels for purchase of development rights or the acquisition of agricultural conservation easements, the department of agriculture shall seek the assistance of the department of natural resources, Michigan state university, the United States department of agriculture-natural resources conservation service, and other appropriate professional and industry organizations. The selection criteria shall give consideration to the quality and physical characteristics of the parcel as well as surrounding land uses and threat of development.

(2) The department of agriculture shall prepare a notification to those individuals whose farmland development rights agreements are expiring in the year of application or expiring 1 year after the year of application. The notice shall be completed not less than 90 days before an application deadline set by the department of agriculture and shall include written information and details regarding the program. Applications for the purchase of development rights or the acquisition of agricultural conservation easements shall be submitted to the department of agriculture by the owner of that land and must include written support by the local governing body.

(3) In developing a scoring system, points shall be given to farmland that meets 1 or more of the following criteria, with subdivision (a) given priority over subdivisions (b) to (e):

(a) Productive capacity of farmland suited for the production of feed, food, and fiber, including, but not limited to, prime or unique farmland or farmland of local importance, as defined by the United States department of agriculture-natural resources conservation service.

(b) Lands that are enrolled under this act.

(c) Prime agricultural lands that are faced with development pressure that will permanently alter the ability for that land to be used for productive agricultural activity.

(d) Parcels that would complement and are part of a documented, long-range effort or plan for land preservation by the local governing body.

(e) Parcels with available matching funds from the local governing body, private organizations, or other sources.

(4) For purposes of subsections (7) and (8), the value of development rights in the purchase of development rights or the acquisition of agricultural conservation easements shall be determined by subtracting the current fair market value of the property without the development rights from the current fair market value of the property with all development rights.

(5) The director of the department of agriculture shall approve individual parcels for the purchase of development rights or the acquisition of agricultural conservation easements based upon the adopted selection criteria and scoring process. The commission of agriculture shall approve a method to establish the price to be paid for the purchase of development rights or the acquisition of agricultural conservation easements, such as via appraisal, bidding, or a formula-based process and shall establish the maximum price to be paid on a per purchase basis from the lien fund. The director of the department of agriculture, after negotiations with the landowner, shall approve the price to be paid for purchase of development rights or the acquisition of the agricultural conservation easements. Proper releases from mortgage holders and lienholders must be obtained and executed to ensure that all development rights are purchased free and clear of all encumbrances.

(6) The department may purchase the agricultural conservation easement through an installment purchase agreement under terms negotiated by the department.

(7) An agricultural conservation easement shall include appropriate provisions for the protection of the farmland and other unique and critical benefits. An agricultural conservation easement may be terminated if the land, as determined by the commission of agriculture, meets 1 or more of the criteria described in section 36111a(1)(a) to (d). An agricultural conservation easement or portion of an agricultural conservation

easement shall not be terminated unless approved by the local governing body and the commission of natural resources and the commission of agriculture. If an agricultural conservation easement is terminated, the current fair market value of the development rights, at the time of termination, shall be paid to the state land use agency. Any payment received by the state land use agency under this part shall be used to acquire agricultural conservation easements on additional farmland under section 36111(10).

(8) Whenever a public entity, authority, or political subdivision exercises the power of eminent domain and condemns land enrolled under this act, the value of the land shall include the value of development rights covered by development rights agreements or agricultural conservation easements. If the development rights have been purchased or agricultural conservation easements have been acquired under section 36111(10), the value of the development rights at the time of condemnation shall be paid to the state land use agency and any payment received by the state land use agency shall be used to acquire agricultural conservation easements on additional land under section 36111(10).

History: Add. 1996, Act 233, Imd. Eff. June 5, 1996;—Am. 2000, Act 262, Imd. Eff. June 29, 2000.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36112 Relinquishment of open space development rights easement pursuant to MCL 324.36105.

Sec. 36112. (1) An open space development rights easement pursuant to section 36105 shall be relinquished by the state at the expiration of the term of the easement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding open space development rights easements, the owner is entitled to automatic renewal of the agreement upon written request of the landowner.

(2) An open space development rights easement may be relinquished by the state prior to a termination date contained in the instrument as follows:

(a) At any time the state determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body where the original application for an open space development rights easement was submitted requesting that the development rights easement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and shall be subject to the provisions as provided in sections 36104 and 36105 for review and approval.

(3) If the request for relinquishment of the development rights easement is approved, the state land use agency shall prepare an instrument providing for the relinquishment of the open space development rights easement, subject to subsections (4), (5), (6), and (7), and shall record it with the register of deeds of the county in which the land is situated.

(4) At the time a development rights easement is to be relinquished pursuant to subsection (2)(b), the state land use agency shall cause to be prepared and recorded a lien against the property formerly subject to the development rights easement for the total amount of the ad valorem taxes not paid on the development rights during the period it was held by the state, if any. The lien shall provide that interest at the rate of 6% per annum compounded shall be added to the ad valorem taxes not paid from the time the exemption was received until it is paid.

(5) The lien shall become payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former open space development rights easement.

(6) Upon the termination of the open space development rights easement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest.

(7) Upon the natural termination of the open space development rights easement pursuant to subsection (1), the state land use agency shall cause to be prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the last 7 years ad valorem taxes not paid on the development rights during the period it was held by the state, if any. The lien shall be without penalty or interest and shall be payable subject to subsection (5).

(8) A copy of the renewal or relinquishment of an open space development rights easement shall be sent to the local governing body's assessing office.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36113 Relinquishment of open space development rights easement pursuant to MCL 324.36106.

Sec. 36113. (1) An open space development rights easement pursuant to section 36106 shall be relinquished by the local governing body at the expiration of the term of the easement unless renewed with the consent of the owner of the land if the owner of the land has complied with the requirements of this part regarding open space development rights easements, the owner shall be entitled to automatic renewal of the agreement upon written request of the landowner.

(2) An open space development rights easement may be relinquished by the local governing body prior to a termination date contained in the instrument as follows:

(a) At any time the local governing body determines that the development of the land is in the public interest and in agreement with the owner of the land.

(b) The owner of the land may submit an application to the local governing body having jurisdiction requesting that the development rights easement be relinquished. The application shall be made on a form prescribed by the state land use agency. The request for relinquishment shall be processed and shall be subject to the provisions as provided in section 36106 for review and approval.

(3) If the request for relinquishment of the open space development rights easement is approved, the local governing body shall prepare an instrument providing for the relinquishment of the open space development rights easement, subject to subsections (4), (5), (6), and (7), and shall record it with the register of deeds of the county in which the land is situated.

(4) At the time an open space development rights easement is to be relinquished pursuant to subsection (2)(b), the local governing body shall cause to have prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the ad valorem taxes not paid on the development rights during the period it was held by the local governing body, if any. The lien shall provide that interest at the rate of 6% per annum compounded shall be added to the ad valorem taxes exemption from the time granted until the lien is paid.

(5) The lien shall become payable to the local governing body by the owner of record at the time the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former open space development rights easement.

(6) Upon the termination of the open space development rights easement pursuant to subsection (2)(a), the development rights revert back to the owner without penalty or interest and the development rights easement upon the land expire.

(7) Upon the natural termination of the open space development rights easement pursuant to subsection (1), the local governing body shall cause to be prepared and recorded a lien against the property formerly subject to the open space development rights easement. The amount of the lien shall be the total amount of the last 7 years ad valorem taxes not paid on the development rights during the period it was held by the local governing body, if any. The lien shall be without penalty or interest and will be payable subject to subsection (5).

(8) A copy of the renewal or relinquishment of an open space development rights easement shall be sent to the local assessing office.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36114 Injunction; penalty.

Sec. 36114. If the owner or a successor in title of the land upon which a development rights agreement or easement has been recorded pursuant to this part changes the use of the land to a prohibited use or knowingly sells the land for a use other than those permitted in the development rights agreement or easement without first pursuing the provisions in sections 36110(2), 36111, 36112, and 36113, or receiving permission of the state land use agency, he or she may be enjoined by the state acting through the attorney general, or by the local governing body acting through its attorney, and is subject to a civil penalty for actual damages, which in no case shall exceed double the value of the land as established at the time the application for the development rights agreement or easement was approved.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36115 Exchange of information.

Sec. 36115. All departments and agencies of state government shall cooperate with the state land use agency in the exchange of information concerning projects and activities that might jeopardize the preservation of land contemplated by this part. The state land use agency shall periodically advise the departments and agencies of state government of the location and description of land upon which there exists development rights agreements or easements and the departments and agencies shall harmonize their planning and projects consistent with the purposes of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36116 Rules.

Sec. 36116. The state land use agency may promulgate rules for the administration of this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

324.36117 Report; recommendations to legislature.

Sec. 36117. The state land use agency shall prepare a report and make recommendations to the legislature not later than January 30, 1976, for a state plan for preserving open space lands, agricultural and horticultural lands, unique or critical land areas, recreational lands, and historic lands.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA

PART 362
AGRICULTURAL PRESERVATION FUND

324.36201 Definitions.

Sec. 36201. As used in this part:

(a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(b) "Agricultural use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program, a federal conservation reserve program, or a wetland reserve program. Agricultural use does not include the management and harvesting of a woodlot.

(c) "Board" means the agricultural preservation fund board created in section 36204.

(d) "Commission" means the commission of agriculture.

(e) "Department" means the department of agriculture.

(f) "Development" means an activity that materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with an agricultural use.

(g) "Development rights" means an interest in land that includes the right to construct a building or structure, to improve land for development, or to divide a parcel for development purposes.

(h) "Farmland" means 1 or more of the following:

(*i*) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.

(*ii*) A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51% or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of $200.00 per year

or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set-aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of $200.00 per year or more per acre of cleared and tillable land.

(*iii*) A farm designated by the department of agriculture as a specialty farm in 1 ownership that has produced a gross annual income of $2,000.00 or more from an agricultural use. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.

(*iv*) Parcels of land in 1 ownership that are not contiguous but which constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.

(i) "Fund" means the agricultural preservation fund created in section 36202.

(j) "Grant" means a grant for the purchase of an agriculture conservation easement under this part.

(k) "Owner" means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor.

(*l*) "Permitted use" means any use expressly authorized within an agriculture conservation easement consistent with the farming operation or that does not adversely affect the productivity of the farmland. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years. Permitted use includes oil and gas exploration and extraction, but does not include other mineral development that is inconsistent with an agricultural use.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

Popular name: Act 451

Popular name: NREPA

324.36202 Agricultural preservation fund; creation; disposition; money remaining in fund; expenditures.

Sec. 36202. (1) The agricultural preservation fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including federal funds, other state revenues, gifts, bequests, and other donations. The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) Money in the fund may be expended, upon appropriation, following approval of the board and the commission, as follows:

(a) Not more than $900,000.00 annually for the administrative costs of the department and the board in implementing this part and part 361. However, if deposits into the fund during any given fiscal year exceed $11,250,000.00, up to 8% of the deposits may be expended for administrative costs pursuant to this subdivision.

(b) After expenditures for the administrative costs under subdivision (a), money in the fund may be used to provide grants to local units of government pursuant to section 36203.

(c) After expenditures under subdivisions (a) and (b) have been made, if the amount of money remaining in the fund exceeds $5,000,000.00, money in the fund may be used pursuant to part 361 for the purchase of development rights to farmland or the acquisition of agricultural conservation easements.

(5) Expenditures of money in the fund as provided in this part are consistent with the state's interest in preserving farmland and are declared to be for an important public purpose.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000;—Am. 2004, Act 75, Imd. Eff. Apr. 21, 2004.

Popular name: Act 451

Popular name: NREPA

324.36203 Purchase of agricultural conservation easements; establishment of grant program; application; eligibility; form; contents; forwarding to board.

Sec. 36203. (1) The department shall establish a grant program to provide grants to eligible local units of government for the purchase of agricultural conservation easements.

(2) A grant application shall be submitted by the local unit of government applying for the grant. A local unit of government is eligible to submit a grant application under this section if both of the following requirements have been met:

(a) The local unit of government has adopted a development rights ordinance providing for a purchase of development rights program pursuant to the county zoning act, 1943 PA 183, MCL 125.201 to 125.240, the township zoning act, 1943 PA 184, MCL 125.271 to 125.310, or the city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600, that contains all of the following:

(*i*) An application procedure.

(*ii*) The criteria for a scoring system for parcel selections within the local unit of government.

(*iii*) A method to establish the price to be paid for development rights, which may include an appraisal, bidding, or formula-based process.

(b) The local unit of government has adopted, within the last 10 years, a comprehensive land use plan that includes a plan for agricultural preservation or the local unit of government is included within a regional plan that was prepared within the last 10 years that includes a plan for agricultural preservation.

(3) An application for a grant shall be submitted on a form prescribed by the department. The grant application shall include at a minimum a list of the parcels proposed for acquisition of agricultural conservation easements, the size and location of each parcel, the amount of local matching funds, and the estimated acquisition value of the agricultural conservation easements.

(4) Upon receipt of grant applications pursuant to subsection (3), the department shall forward those grant applications to the board for consideration under section 36205.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

Popular name: Act 451

Popular name: NREPA

324.36204 Agricultural preservation fund board; creation; membership; appointment; terms; quorum; compensation; expenses; election of chairperson and vice-chairperson; removal of member; vacancy.

Sec. 36204. (1) The agricultural preservation fund board is created within the department.

(2) The board shall consist of the following members:

(a) The director of the department or his or her designee.

(b) The director of the department of natural resources or his or her designee.

(c) Five individuals appointed by the governor as follows:

(*i*) Two individuals representing agricultural interests.

(*ii*) One individual representing conservation interests.

(*iii*) One individual representing development interests.

(*iv*) One individual representing the general public.

(d) In addition to the members described in subdivisions (a) to (c), the director of the department may appoint 2 individuals with knowledge and expertise in agriculture or land use, or local government, as nonvoting members.

(3) The members first appointed to the board shall be appointed within 60 days after the effective date of this section.

(4) Members of the board appointed under subsection (2)(c) and (d) shall serve for terms of 4 years or until a successor is appointed, whichever is later. However, of the members first appointed under subsection (2)(c), 1 shall be appointed for a term of 2 years, 2 shall be appointed for terms of 3 years, and 2 shall be appointed for terms of 4 years.

(5) A majority of the members of the board constitute a quorum for the transaction of business at a meeting of the board. A majority of the members present and serving are required for official action of the board.

(6) Members of the board shall serve without compensation. However, members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the board.

(7) The board shall annually elect a chairperson and a vice-chairperson from among its members.

(8) The board may remove a member of the board for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(9) A vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

Popular name: Act 451

Popular name: NREPA

324.36205 Application; evaluation criteria; priority; determination of grant awards; amount;

notification; report to commission; maximum expenditure; portion of acquisition cost to be provided by applicant or another person.

Sec. 36205. (1) An application submitted to the board under section 36203 shall be evaluated according to selection criteria established by the board. The criteria shall place a priority on the acquisition of agricultural conservation easements on farmland that meets 1 or more of the following:

(a) Farmland that has a productive capacity suited for the production of feed, food, and fiber.

(b) Farmland that would complement and is part of a documented, long-range effort or plan for land preservation by the local unit of government in which the farmland is located.

(c) Farmland that is located within an area that complements other land protection efforts by creating a block of farmland that is subject to an agricultural conservation easement under this part or part 361, or a development rights agreement under part 361, or in which development rights have been acquired under part 361.

(d) Farmland in which a greater portion of matching funds or a larger percentage of the agricultural conservation easement value is provided by a local unit of government or sources other than the fund.

(e) Other factors considered important by the board.

(2) After reviewing grant applications for the acquisition of agricultural conservation easements and evaluating them according to the criteria established in subsection (1), the board shall determine which grants should be awarded and the amount of the grants. Upon making its determination, the board shall notify the department and shall submit a report containing this information to the commission.

(3) The board may establish a maximum amount per acre that may be expended with money from the fund for the purchase of agricultural conservation easements.

(4) A grant shall require that a portion of the cost of acquiring an agricultural conservation easement shall be provided by the applicant or another person.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

Popular name: Act 451

Popular name: NREPA

324.36206 Distribution of grants to local units of government; condition; reviewing permitted uses; contribution of development rights; purchase by local unit of government through installment purchase agreement; joint holding by state and local unit of government; delegation of enforcement authority; transfer to property owner; tax credits under MCL 324.36109.

Sec. 36206. (1) After the board determines which grants should be awarded, and the amount of the grants, the department shall distribute the grants to the local units of government awarded the grants. The department shall condition the receipt of a grant upon the department's approval of the agricultural conservation easements being acquired.

(2) In reviewing permitted uses contained within an agricultural conservation easement under subsection (1), the department shall consider all of the following:

(a) Whether the permitted uses adversely affect the productivity of farmland.

(b) Whether the permitted uses materially alter or negatively affect the existing conditions or use of the land.

(c) Whether the permitted uses result in a material alteration of an existing structure to a nonagricultural use.

(d) Whether the permitted uses conform with all applicable federal, state, and local laws and ordinances.

(3) The department may accept contributions of all or a portion of the development rights to 1 or more parcels of land, including a conservation easement or a historic preservation easement as defined in section 2140, as part of a transaction for the purchase of an agricultural conservation easement.

(4) A local unit of government that purchases an agricultural conservation easement with money from a grant may purchase the agricultural conservation easement through an installment purchase agreement under terms negotiated by the local unit of government.

(5) An agricultural conservation easement acquired under this part shall be held jointly by the state and the local unit of government in which the land subject to the agricultural conservation easement is located. However, the state may delegate enforcement authority of 1 or more agricultural conservation easements to the local units of government in which the agricultural conservation easements are located.

(6) An agricultural conservation easement acquired under this part may be transferred to the owner of the property subject to the agricultural conservation easement if the state and the local unit of government holding the agricultural conservation easement agree to the transfer and the terms of the transfer.

(7) Section 36109 provides for tax credits for an owner of farmland subject to an agricultural conservation easement under this section.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000;—Am. 2002, Act 75, Imd. Eff. Mar. 15, 2002.

Popular name: Act 451

Popular name: NREPA

324.36207 Rules.

Sec. 36207. The department may promulgate rules to implement this part.

History: Add. 2000, Act 262, Imd. Eff. June. 29, 2000.

Popular name: Act 451

Popular name: NREPA